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JAMES H. McKENNEY,
Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1902.

THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, *Plaintiff in Error,* vs. THE PEOPLE OF THE STATE OF ILLINOIS, ex relatione SAMUEL B. RAYMOND, County Treasurer and ex officio County Collector of Cook County, Illinois, *Defendant in Error.*	No. 140.
THE BOARD OF DIRECTORS OF THE CHICAGO THEOLOGICAL SEMINARY, *Plaintiff in Error,* vs. THE PEOPLE OF THE STATE OF ILLINOIS, ex relatione SAMUEL B. RAYMOND, County Treasurer and ex officio County Collector of Cook County, Illinois, *Defendant in Error.*	No. 265.

In Error to the Supreme Court of the State of Illinois.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

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STATEMENT.

In these two cases (No. 140 and No. 265) an order was made on the joint motion of both parties advancing No. 265 to be heard and argued as one case with No. 140, on the ground that the two cases involve the same general question.

Both cases are writs of error brought to review judgments of the Supreme Court of Illinois (the highest court of the State) affirming judgments of the County Court of Cook County against the plantiff in error.

Both of the judgments of the trial court affirmed by the State Supreme Court were judgments for general taxes levied on certain real estate of the plaintiff in error, particularly described, (No. 140, Pr. Rec., 20–21; No. 265, Pr. Rec., 17–19), the judgment in No. 140 being for the taxes for the year 1899, and in No. 265, for the taxes for the year 1900.

The plaintiff in error was incorporated under an act of the legislature of Illinois passed in the year 1855, entitled:

"An Act to incorporate the Chicago Theological Seminary." (No. 140, Pr. Rec., 26–27; No. 265, Pr. Rec., 21–22.)

Section 5 of the act was as follows:

"Sec. 5. That the property of whatever kind or description belonging or appertaining to said seminary shall be forever free and exempt from all taxation for all purposes whatsoever."

The charter of incorporation was duly accepted, and, acting on the faith of its provisions, plaintiff in error has acquired, by donation and purchase, the particular real estate on which the taxes in question were levied, and other property, and, in addition, has expended in the erection and purchase of buildings on the real estate owned by it an amount exceeding $200,000, and a large number of students have been and are being instructed by it in pursuance of its charter. (No. 140, Pr. Rec. 26; No. 265, Pr. Rec., 20.)

The taxes for which the judgments of the State Court in the two cases were rendered were levied under the General Revenue Act of Illinois, passed in 1872.

The particular pieces of real estate against which the judgments were rendered, were the same in both cases, and the same general facts as to the purposes for which they were acquired and are held, are stipulated in both cases,—that they were acquired by the plaintiff in error by gift or purchase, and are held by it to promote the objects for which it was incorporated, and that the rentals received from them are used for those purposes. (No. 140, Pr. Rec., 26; No. 265. Pr. Rec., 20.)

In both cases in the trial court, the plaintiff in error by objections in writing set up the provision of its charter (Section 5 already quoted) granting it exemption from taxation, and claimed that the Revenue Act of 1872, and the action of the officers of the State in levying the taxes under it, violated the obligation of its contract with the State arising from the charter, and were, for that reason, contrary to the provision (Paragraph 1 of Section X of Article I) of the Constitution of the United States, that no state shall pass any law impairing the obligation of contracts. (No. 140, Pr. Rec., 16; No. 265, Pr. Rec., 16.)

The assignments of errors in this court in both cases are in substantially the same language, and present the same question (and no other)—whether the General Revenue Act of 1872, and the action of the state under it in levying the taxes on the particular property (in No. 140, the taxes for 1899, and in No. 265, the taxes for 1900), impaired the obligation of the contract arising from the charter of the plaintiff in error. (No. 140, Pr. Rec., 67–70; No. 265, Pr. Rec., 35–38.)

The entire act incorporating plaintiff in error is as follows:

An Act to Incorporate the Chicago Theological Seminary.

Section 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, that Stephen Peet, William Carter, Flavel Bascom, M. A. Jewett, Geo. W. Parkins, Philo Carpenter, Truman Post, John C. Holbrook, Horace Hobart, John J. Miter, Hiram Foote, Joseph Johnston, Harvey D. Kitchell, Alden B. Robbins, Adam S. Kedzie, L. Smith Hobart, Nathan H. Eggleston, Solomon L. Withey, Jesse Guernsey, Joseph E. Beebe, Charles W. Camp, John G. Foote, Richard Hall, Geo. S. F. Savage and their successors be, and they hereby are, created a body politic and corporate, to be styled "The Board of Directors of the Chicago Theological Seminary," and by that name and style to remain and have perpetual succession, with full power to sue and be sued, plead and be impleaded; to acquire, hold and convey property, real and personal; to have and use a common seal; to alter and renew the same at pleasure; to make and alter a constitution and by-laws for the conducting and government of said institution, and fully to do whatever may be necessary to carry out the object of this act of incorporation.

Sec. 2. That the seminary shall be located in or near the City of Chicago. The object shall be to furnish instruction and the means of education to young men preparing for the gospel ministry, and the institution shall be equally open to all denominations of christians for this purpose.

Sec. 3. That the board of directors shall consist twenty-four members, nine of whom shall constitute a quorum for the transaction of business. The directors shall hereafter be elected in accordance with the provisions of the constitution under which they act and shall hold their office until their successors are appointed.

Sec. 4. The board of directors shall have power to appoint an executive committee and such agents as they may deem necessary, and such officers, professors and teachers as the government and instruction of the seminary may require, and prescribe their duties, to remove any of them for sufficient reasons, and prescribe and direct the course of studies to be pursued in the institution; also, to confer

such degrees as are consistent with the object of the institution.

SEC. 5. That the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever.

SEC. 6. This act to take affect and be in force from and after its passage, and it shall be deemed a public act, and shall be construed liberally in all courts for the purposes therein expressed.

The State Supreme Court held that the provision granting the exemption from taxation (Section 5), notwithstanding its broad general language, "refers only to the property *used in immediate connection with* the seminary, and *does not include other property* which may be owned, rented or held by the *said seminary* as an investment, *even though the income thereof is used solely for school purposes.*" (No. 140, Pr. Rec., 54; No. 265, Pr. Rec., 31).

The claim of plaintiff in error, on the other hand, is, that it was the clear intention of the provision to exempt from taxation all property acquired and held by it to promote the objects for which it was incorporated and that the particular property against which the judgments were rendered was therefore exempt.

The following additional facts are material to the questions presented:

Section 3, Article IX of the Constitution of Illinois, adopted in 1848 and in force at the time the charter of plaintiff in error was passed, was as follows (1 Starr & C. Ann. Stats. Ill., p. 85):

"The property of the state and counties, both real and personal, *and such other property as the General Assembly may deem necessary for school, religious and charitable purposes, may be exempted from taxation.*"

The same constitution gave power to the legislature to grant special charters of incorporation for any lawful purpose, including the incorporation of charitable and educational institutions.

In *University* v. *People*, 99 U. S., 309, this court held that under these constitutional provisions the legislature of Illinois had unlimited power to grant by special charter total or partial exemptions from taxation to educational and charitable institutions.

At the time that this constitution was adopted, Illinois was a comparatively new and sparsely settled state, and the manifest purpose of these provisions was to empower the legislature to encourage, by liberal grants of special charters and exemptions from taxation, individual efforts and donations for the establishment and maintenance of educational and other charitable institutions.

Acting under these constitutional provisions, the legislature of Illinois, during the period which followed the adoption of the constitution of 1848, until the constitution of 1870, which first imposed a limitation on the power of the legislature as to the exemptions from taxation, at each succeeding session granted special charters containing exemptions from taxation, total or partial, to different educational institutions. (See Appendix.)

Several of these charters, passed at different sessions, which contain provisions of exemption from taxation *identical in language* with the provision in the charter of plaintiff in error, quoted *supra,*—in such a connection with other provisions that, as plaintiff in error claims (see *infra*), there is no possible room for the only argument on which the State Court based its decision, and it is therefore indisputable that a *total* exemption was intended—are set out in the Appendix filed with this brief. (Appendix, pp. 5-13.)

Other of these charters passed at the same sessions (see Appendix, pp. 2-5), provided *in terms* and by specific language for *partial* exemptions from taxation *identical with the exemption which the Supreme Court of Illinois has held in the two cases before the court was the exemption intended* by the broad general language of the exemption provision in the charter of plaintiff in error.

Thus, at the session next preceding that at which the legislature passed the Act incorporating plaintiff in error—that of 1853—it incorporated the Oregon Union Institute (Appendix, p. 3), granting it a *partial* exemption from taxation by the following specific provision:

"Sec. 16. *The tract of land on which the buildings of the institute may be erected, together with all the furniture, books, and apparatus belonging to said institute,* shall be exempt from all taxes."

So, at the same session at which the charter of plaintiff in error was passed, that of 1855, the Legislature granted a charter to the German School Association of Muscoutah, but limited the exemption from taxation by the following specific provision (Appendix, p. 3):

"Sec. 9. *The school house of the Association, and the fixtures in the same, the books and library of the Association, and the lot of ground on which their school house is or may be erected,* shall be exempt from taxation."

So, at each of the different sessions at which the charters referred to *supra,* containing exemptions from *taxation identical with* that of plaintiff in error, were granted, like *specific partial* exemptions from taxation were made in the charters incorporating other educational institutions. (See Appendix, pp. 3-5 and 5-13.)

In 1870 a new Constitution was adopted, and, in substitution for the provision of the previous Constitution, that

of 1848, under which these different grants of special charters containing exemptions from taxation were made, the following provision was adopted (Article 9, Sec. 3; 1 Starr & C. Ann. Stats. Ill., p. 171; Stats. Ills. 1874, p. 75):

"The property of the state, counties and other municipal corporations, both real and personal, *and such other property as may be used* EXCLUSIVELY *for agricultural and horticultural societies, for* school, religious, seminary and charitable PURPOSES, may be exempted from taxation; but such exemption shall be only by general law."

At the next session of the legislature, after the adoption of this new Constitution, that of 1872, the legislature began the work of a complete revision of the statutes of the state to conform to the provisions of the new Constitution. At that session a new and revised Revenue Act was adopted. (3 Starr & C. Ann. Stats. Ill., pp. 3398, 3399):

This Act, so far as material, was as follows:

"Sec. 1. That the property named in this section *shall be* assessed and taxed, *except* so much thereof *as may be, in this Act, exempted.*

First. *All real and personal property* in this State."

* * *

"Sec. 2. All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say:

First. All lands donated by the United States for school purposes, not sold or leased. All public school houses. All property of institutions of learning, including the real estate on which the institutions are located, *not leased by such institutions or otherwise used with a view to profit.* * * *

Seventh. All property of institutions of purely public charity, when *actually and exclusively used for such charitable purposes, not leased or otherwise used with a view to profit;* and all free public libraries."

So far as appears, no property of plaintiff in error was taxed prior to the passage of this act, or until the year 1878, a period of more than twenty years.

In the year 1878, the State authorities, acting under the Revenue Act of 1872, quoted *supra,* levied general taxes for that year on a number of the pieces of real estate, against which the judgments in the case before the court were rendered. The objection was made to the entry of judgment for these taxes that the property was exempt from taxation under the charter provision. This objection *was sustained by the court,* and a judgment was accordingly rendered in favor of the plaintiff in error.

No appeal was taken, or writ of error sued out by the State to reverse this judgment. (No. 140, Pr. Rec., 41.)

In like manner, in each of the years 1880, 1881, 1888, 1889, 1890, 1891, 1893, 1894 and 1895, like general taxes were levied on the same and other property, and, on application to the County Court for judgment for the taxes, the same objection was made, and a like judgment in favor of plaintiff in error was rendered. (No. 140, Pr. Rec., 29-41.)

In the same way, in each of these years, no appeal was taken or writ of error sued out by the State to review these nine different judgments in favor of plaintiff in error. (No. 140, Pr. Rec., 41.)

In the year 1896, general taxes were again levied on the same property and, on application to the County Court for judgment for the taxes, the same objection was made by plaintiff in error, and a like judgment in its favor was rendered. (No. 140, Pr. Rec., 43.)

In this case, however, the State, instead of acquiescing in the judgment, as in the previous years, took an appeal to the Supreme Court of the State.

On this appeal the State Supreme Court decided adversely to plaintiff in error, holding that the particular

property on which the taxes were levied was not within the exemption provision (*People ex rel.* v. *Chicago Theological Seminary,* 174 Ill., 177), but no final judgment was rendered by that court, the case *being remanded to the County Court for further proceedings* in conformity with the opinion. (174 Ill., 183.)

Section 83 of the Illinois Practice Act (Ch. 110, 3 Starr & C. Ann. Stats. Ill., p. 3111) provided that if a case was remanded by the Supreme Court to the court in which it was tried, the Supreme Court should issue its mandate reversing and remanding the case, and that *on the filing in the trial court* of a copy of the order remanding the case *and notice to the opposite party* "the cause or proceeding *shall be reinstated.*"

Section 84 provided:

"If neither party shall file such transcript *within two years* from the time of making such final order of the Supreme Court or Appellate Court, as the case may be reversing any judgment or proceeding, the cause shall be *considered as abandoned and no further action shall be had therein.*"

It appears from the record in No. 140 that the opinion in the case in 174 Ill. was filed June 18, 1898, and that at the date of the trial in that case, October 24, 1900, *more than two years after the opinion was filed, no transcript of the order remanding the case had ever been filed in the County Court.* (No. 140, Pr. Rec., 43.)

As a consequence, the decision of the State Supreme Court in 174 Ill. has never been brought to this court for review, for the reasons (1) that the judgment of the State Supreme Court, not being a final judgment, the plaintiff in error could not sue out a writ of error to review it, and (2) that the State did not prosecute the case further in the

County Court, but *abandoned it, and no judgment has therefore been rendered at any time against plaintiff in error for the particular taxes involved in the case.*

In the year 1899, the State made a like levy on the same and other property, for the general taxes of that year, being the taxes for which the judgment in No. 140 was rendered.

On the application for judgment for these taxes, plaintiff in error made the objection that under its charter the property was exempt from taxation, and that the action of the State in levying the taxes, impaired the obligation of the contract of exemption. (No. 140, Pr. Rec., 16.)

The objection was overruled and judgment was rendered against plaintiff in error. On appeal from this judgment, the State Supreme Court affirmed the judgment, holding, on the authority of its previous decision in *People ex rel.* v. *Chicago Theological Seminary*, 174 Ill., 177, that the charter provision only exempted "the property *used in immediate connection with* the seminary" (the school buildings and grounds), and did not therefore include the particular property on which the taxes were levied. (No. 140, Pr. Rec., 54; *Chicago Theological Seminary* v. *People*, 189 Ill., 439.)

This judgment is the judgment in No. 140.

Pending the writ of error from this judgment, the State, in like manner, levied on the same property the general taxes for the year 1900, being the taxes for which the judgment was rendered in No. 265.

On the application for judgment in the County Court, the same objection was made and overruled, and judgment was entered against plaintiff in error. (No. 265, Pr. Rec., 16, 19.)

On appeal from this judgment the State Supreme Court affirmed the judgment on the authority of its previous decisions in *People ex rel.* v. *Chicago Theological Seminary,* 174 Ill., 177, and *Chicago Theological Seminary* v. *People,* 189 Ill., 439. (No. 265, Pr. Rec., 31; *Chicago Theological Seminary* v. *People,* 193 Ill., 619.)

This judgment is the judgment in No. 265.

SPECIFICATION OF ERRORS RELIED ON.

I.

That by clause 5 of the charter of plaintiff in error, granted to it by the State of Illinois, all property of every kind and description of the plaintiff in error was exempt from all taxes of every kind and description, and that the General Revenue Act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An Act for the Assessment of Property and for the Levy and Collection of Taxes," with its amendments, under which the said judgment of the County Court of Cook County, Illinois, in said cause, against the lands of the plaintiff in error was rendered, was an impairment of the obligation of the contract between the State of Illinois and this plaintiff in error, arising from said charter, and that the said General Revenue Act of the State of Illinois violated Clause 1, Section 10, Article 1, of the Constitution of the United States, and that by reason thereof, the said Supreme Court of Illinois erred in rendering judgment against the plaintiff in error. (Assignment I, No. 140, Pr. Rec., 67-68; No. 265, Pr. Rec., 35.)

II.

That the said Supreme Court of Illinois erred in not holding that the charter of the said plaintiff in error, granted to it by the state of Illinois, exempted from taxation, under the laws of the State of Illinois, the property of the plaintiff in error, against which judgment was rendered by the County Court of Cook County, in said cause, and that by reason thereof the General Revenue Act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: "An Act for the Assessment of Property and for the Levy and Collection of Taxes," under which the taxes for which said judgment was rendered were levied, and the action of the officers of the State of Illinois thereunder, impaired the obligation of the contract between the State of Illinois and the plaintiff in error arising from the charter granted to the plaintiff in error by the State of Illinois, and was thereby repugnant to the Constitution of the United States, and in not reversing said judgment of the said County Court of Cook County. (Assignment IV, No. 140, Pr. Rec., 68-69; No. 265, Pr. Rec.,36.)

BRIEF OF ARGUMENT.

I.

THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT OF THE STATE COURT, AND, IN THE EXERCISE OF THAT JURISDICTION, HAS POWER TO DETERMINE THE QUESTION AS TO THE CONSTRUCTION TO BE GIVEN TO THE PROVISION IN THE CHARTER OF PLAINTIFF IN ERROR EXEMPTING ITS PROPERTY FROM TAXATION. (Argument, pp. 35-46.)

1. In both cases the claim was made by plaintiff in error, in the State Court, that the subsequent revenue law, and the action of the State officers in levying the tax under it, violated the obligation of its contract of exemption from taxation, and the writs of error, brought to review the judgments of the State Supreme Court deciding the question thus raised adversely to plaintiff in error, present a federal question which this court has jurisdiction to determine. (Argument, *infra*, pp. 35-37.)

In the following cases, in which the jurisdiction of this court was invoked, on the ground that the subsequent law and the action of the state officers in levying a tax under it, impaired the obligation of the contract of exemption, this court sustained the jurisdiction and enforced the obligation of the contract. (Argument, pp. 36-37):

University v. *People*, 99 U. S., 309.

Asylum v. *New Orleans*, 105 U. S., 362.

State Bank of Ohio v. *Knoop*, 16 How., 378.

Home of the Friendless v. *Rouse*, 8 Wall., 430.

The Washington University v. *Rouse*, 8 Wall., 439.

Wilmington Railroad v. *Reid,* 13 Wall., 266.
Humphrey v. *Pegues,* 16 Wall., 244.
Pacific Railroad Co. v. *Maguire,* 20 Wall., 36.

2. The determination of the federal question presented, involves the decision of the question as to the proper construction of the exemption provision of the charter of plaintiff in error, and this court will, therefore, determine for itself, in the exercise of its appellate and revisory jurisdiction, the question of construction presented, irrespective of the decision made by the State Supreme Court. (Argument, pp. 37–39.)

University v. *People,* 99 U. S., 309.
Jefferson County Bank v. *Skelly,* 1 Black, 443.
Bridge Proprietors v. *Hoboken,* 1 Wall., 144.
State Bank v. *Knoop,* 16 How., 369.
Delmar v. *Insurance Co.,* 14 Wall., 668.
Houston & Texas Central R. R. Co. v. *Texas,* 177 U. S., 66, 77.
Columbia Water Power Co. v. *Columbia Electric Street Railway Co.,* 172 U. S., 475, 487.

3. In both the cases before the court, the State Supreme Court expressly decided the federal question involved adversely to the plaintiff in error, and such decision was necessary to the judgment rendered. (Argument, pp.39–46.)

1. *As to No. 265,* the *sole* question presented or passed on, either in the State trial court or in the State Supreme Court, was the single question, whether the subsequent state revenue law and the action of the state officers under it, in levying the particular tax, impaired the obligation of the contract. (See the opinion of the State Supreme Court in No. 265, Pr. Rec., 31; *Chicago Theological Seminary* v.

People, 193 Ill., 619; see, also, the certificate of the Chief Justice of the State Supreme Court in No. 265, Pr. Rec., 31-32; Argument, pp. 39-41.)

(1.) It is true that its two previous decisions (*People* v. *Chicago Theological Seminary*, 174 Ill., 177, and *Chicago Theological Seminary* v. *People*, 189 Ill., 439), were referred to by the State Supreme Court, in the opinion in No. 265, as controlling on the question, but the *judgments* in those cases were not in the record, and the *decisions* were referred to, not as *res adjudicata*, but only as previous *decisions of the same court* on the particular question, binding on it under the doctrine of *stare decisis*. (Argument, p. 40.)

(2.) It also appears from the opinion in *People* v. *Chicago Theological Seminary*, 174 Ill., 177, that the particular case was reversed *and remanded* by the State Supreme Court "*for further proceedings* in accordance with the views herein (in the opinion) expressed," and for that reason, not being a *final* judgment, it was not subject to review by this court. (Argument, pp. 40-41.)

Brown v. *Baxter*, 146 U. S., 619.
Rice v. *Sanger*, 144 U. S., 197.
Johnson v. *Keith*, 117 U. S., 199.

(3.) As to *Chicago Theological Seminary* v. *People*, 189 Ill., 439 (No. 140), it also appears from the record that both at the time of the judgment in the County Court and of the decision by the State Supreme Court in No. 265, a writ of error had been sued out from this court to review the judgment, and the case was pending in this court.

2. *As to No. 140*, the record shows that in the State Trial Court, in addition to the objection that the levy of the tax was

in violation of the obligation of the charter provision, the plaintiff in error *also set up*, by its objections, different prior judgments *rendered by the State County Court in favor of plaintiff in error* on application for judgments against the same property for taxes in different previous years, which *sustained* the objection that the levy of the tax was in violation of the obligation of the charter of plaintiff in error, and from which no appeals or writs of error were taken, and claimed that these prior judgments *of the State County Court* were *res adjudicata* of the question as to the proper construction of the charter provision. (No. 140, Pr. Rec., 17-19; Argument, pp. 41-46.)

In the State Supreme Court, in No. 140, *both* of these objections were again raised and passed on by the court in its opinion.

It appears from its opinion (No. 140, Pr. Rec., 54; *Chicago Theological Seminary* v. *People,* 189 Ill., 439), in connection with the other facts shown in the record (Argument, pp. 43-45):

(1) That the State Supreme Court expressly passed on the question whether the subsequent law impaired the obligation of the contract, and held, following its previous decision in *People ex rel.* v. *Chicago Theological Seminary* (174 Ill., 177), that it did not, for the reason that the charter provision as construed by it did not cover the property on which the particular taxes were levied. (No. 140, Pr. Rec., 54; 189 Ill., at p. 442.)

(2) That the question as to the effect of the former decision in *People* v. *Chicago Theological Seminary* (174 Ill., 177), other than as a previous decision on the question of construction, only arose in the case, and was only considered by the court, *in answer to the objection made by plaintiff in*

error that the former judgments in the County Court were conclusive of the question. (No. 140, Pr. Rec., 17-19; 54-55.)

(3) The only *facts* as to the case in 174 Ill., shown in the record in No. 140, were that the court in that case "filed the opinion," "as set forth *in 174 Ill.,* at p. 177, and *the date* it was filed, and that at the time of the trial, which was more than two years after the filing of the opinion, the case had not been redocketed in the trial court and had therefore been *abandoned.* (No. 140, Pr. Rec., 43.) The *judgment,* if any, entered by the State Supreme Court in pursuance of its *opinion, was not given in evidence or otherwise referred to in the record,* as would have been necessary even to present the claim that the former *judgment* in the case was *res adjudicata* as to the question.

(4) It appeared in the case that the entire proceeding, in which the decision in *Chicago Theological Seminary* v. *People* (174 Ill.), was rendered, *had been abandoned by the State by its failure to redocket the case in the trial court within the time prescribed by Section 84 of the State Practice Act,* which provides (Ch. 110, Starr & C. Ann. Stats. Ill., p. 3111):

"If neither party shall file such transcript within two years from the time of making the final order of the Supreme Court or appellant (appellate) court, as the case may be, reversing any judgment or proceeding, the cause shall be considered as abandoned, and no further action shall be had therein."

The case was, therefore, as effectually out of court as if it had been, in fact, redocketed and dismissed for want of prosecution.

Koon v. *Nichols,* 85 Ill., 155.

See, also, the certificate by the Chief Justice of the State Supreme Court in No. 140, Pr. Rec., 67. (Argument, p. 46.)

II.

THE PROVISION IN THE CHARTER OF PLAINTIFF IN ERROR EXEMPTED FROM TAXATION THE PROPERTY IN QUESTION, AND, FOR THAT REASON, THE LAW UNDER WHICH THE TAXES WERE LEVIED, IMPAIRED THE OBLIGATION OF THE CONTRACT AND THE JUDGMENT SHOULD, THEREFORE, BE REVERSED. (Argument, pp. 47-97.)

The Act is entitled: "An Act *to incorporate* the Chicago Theological Seminary."

Section 5, the exemption provision, is as follows:

"Sec. 5. That the property, *of whatever kind or description, belonging or appertaining to said seminary,* shall be forever free and exempt from all taxation for all purposes whatsoever."

For the Act in full, see Statement, *supra.*

The sole question presented by the decision of the State Supreme Court (*People ex rel.* v. *Chicago Theological Seminary,* 174 Ill., 177, is: To what did the words "said seminary" in the exemption provision refer—to the *institution* incorporated by the Act, or to the *place* where instruction was to be given—the school buildings and grounds?

1. The words, "said seminary," in the exemption provision, referred to the corporation created by the Act, and designated in the title as the Chicago Theological Seminary, and not to the school buildings and grounds, as held by the State Supreme Court, and this being so, the exemption provision indisputably exempted from taxation the property against which the judgments were rendered. (Argument, pp. 51–65.)

1. The first mention of "the seminary" in the Act is in the title, "An Act *to incorporate* the Chicago Theological

Seminary." (No. 140, Pr. Rec., 26; No. 265, Pr. Rec., 21.)

It is well settled that the title of an act may properly be referred to to ascertain the legislative intention. (Argument, p. 51.)

Holy Trinity Church v. *United States,* 143 U. S., 457, 462.
Smythe v. *Fiske,* 23 Wall., 374, 380.
Heirs of Emerson v. *Hall,* 13 Pet., 409, at 413.
Bell v. *Mayor,* 105 N. Y., 144.
President, etc., of St. Vincent's College v. *Schaefer,* 104 Mo., 261.

There can be no room for question that this first mention of the "Chicago Theological *Seminary*" referred to the institution incorporated by the Act, and not "to the *property,*" the school buildings, etc. (Argument, pp. 51-52.)

See,

Heirs of Emerson v. *Hall,* 13 Pet., 409.
Bell v. *Mayor, etc., of N. Y.,* 105 N. Y., 139.
President, etc., of St. Vincent College v. *Shaefer,* 104 Mo., 261.

2. Section 4 (the section immediately preceding the one in question) provides "that the board of directors shall have power to appoint * * * such *officers,* professors and teachers, as the *government* and instruction of *the seminary* may require, and prescribe their duties, and remove any of them for sufficient reason."

Here, again, it is clear that the word "seminary" refers to the institution which was incorporated by the Act. It was this institution, and not the "particular *property*"—

the school buildings, etc.—which was to have "officers" for its "government" and "professors and teachers" to give "instruction," whom the board of directors of the incorporated institution were authorized by this section to appoint and remove and whose duties they were to prescribe.

3. It is true that, as was customary in the early charters of incorporation, it was provided in section 1 that the corporate name should be "*The Board of Directors* of the Chicago Theological Seminary," and that in the exemption provision this full corporate name is not used.

(1.) Similar corporate names are found in all the earlier charters; those creating railroad corporations, incorporated banks, etc., as well as charitable institutions, such as "The President and Board of Directors of," etc. But it was not therefore necessary or customary to always use the cumbersome full name when the corporation was referred to. (Argument, pp. 53-56.)

Angel and Ames on Corporations, Sec. 99.

On the contrary, instead of using the full corporate name, "*The Board of Directors of* the Chicago Theological Seminary," it was natural and appropriate to use the words "*said* seminary" to designate the incorporated institution referred to in the title of the act as "The Chicago Theological Seminary," and again in section 4 as "the seminary." (Argument, pp. 56-57.)

Marine Bank of Baltimore v. *Bias,* 4 Har. & J. (Md.), 338.

President and Faculty of St. Vincent's College v. *Schaefer,* 104 Mo., 261.

Nobles v. *Hamline University,* 46 Minn., 316.

This use of the shorter designation instead of the full,

formal name, is illustrated (a) in the very title of the Act; (b) in the proceedings in the County Court, in the return of delinquent property (No. 140, Pr. Rec., 12); (c) in the opinion of the Supreme Court of Illinois, in No. 140 (Pr. Rec., 54).

(2.) In fact, that the general words "the Chicago Theological Seminary" were appropriate to designate the incorporated institution is recognized in the very name itself, "The Board of Directors *of* the Chicago Theological Seminary." (Argument, pp. 54-55.)

The seminary buildings had no board of directors. The Board of Directors referred to in this corporate *name* as "The Board of Directors *of* the Chicago Theological Seminary," were the directors of the incorporated institution created by the Act and referred to in its title.

4. There is only one other mention of "the seminary" in the act.

Section 2 provides (No. 140, Pr. Rec., 27):

"Sec. 2. That *the seminary* shall be located in or near the City of Chicago. The *object* shall be to furnish instruction and the means of education to young men preparing for the gospel ministry," etc.

The Supreme Court of Illinois bases its entire conclusion on the words "the seminary" in this section. (*Chicago Theological Seminary* v. *People,* 174 Ill., at p. 182; Argument, p. 58.)

The Court say:

"The second section of the charter mentioning certain *property* to be located in or near the City of Chicago, and which is denominated 'the seminary,' we think the words in the fifth section, 'said seminary,' refer *to that particular property.*"

(1) The court *assumes* without giving any reasons that

the word "seminary" in section 2 refers to "certain *property*"—the school buildings and grounds. (Argument, pp. 59-62.)

This assumption is erroneous:

First. We have already seen that the word "seminary" was in fact three times used in other provisions of the Act to designate the incorporated institution, and the rule is that the same word being used in section 2 it will be presumed that it was there used in the *same* sense, unless a contrary intention is shown.

Second. In determining the sense in which the word "seminary" was used in the sentence, "That the seminary shall be located in or near the City of Chicago," the immediately following sentence is most significant. It reads: "The *object* shall be to furnish instruction and the means of education," etc.

Here is a clear reference to the "seminary" referred to in the immediate preceding sentence. It is equally clear that "the particular *property*"—the school buildings and grounds—was not referred to. "The *object*" referred to—"to *furnish* instruction and the means of education," etc.,—was the object of the *incorporated institution* and not of the mere buildings, etc.

This was recognized in the opinion in 174 Ill., p. 179. (Argument, p. 60.)

Third. The assumption of the opinion that "the seminary" mentioned in section 2 was "particular property" is apparently based on the fact that the word "located" is used in connection with it, and that therefore the *property* —the school buildings—and not the institution incorporated by the Act was referred to.

a. As we have seen, in both the title of the Act and in section 4 "the seminary" was clearly used as referring to the

institution incorporated by the Act. And it was therefore presumably used in the same sense in section 2, unless the use of the word "located" excludes and necessarily gives it the meaning "school buildings."

b. So far from the word "located" necessarily referring to the school buildings, it was a proper and customary use of the word to use it as referring to an incorporated institution such as was created by the Act.

c. The precise word "located" is frequently used in charters and other statutes as applied to corporations. At common law it was an attribute of every corporation that it had a *locality*. Its *locality* was the place where it carried on its operations—where it did business.

Angel and Ames on Corporations, Sec. 103.

Sangamon & Morgan R. R. Co. v. *County of Morgan*, 14 Ill., 163.

Bristol v. *Chicago & Aurora R. R. Co.*, 15 Ill., 436.

Charlotte National Bank v. *Morgan*, 132 U. S., 141.

(2) But even if it is assumed that the words "the seminary" in the particular section 2 referred to "certain property," the school buildings, etc., it does not follow, as the court assumes, that the words "said seminary" in the subsequent section 5, which related to a wholly different subject, also referred to this "property," and not to the incorporated institution. (Argument, pp. 62-65.)

Whatever meaning is given to the words "the seminary" in section 2, the question is in what sense was "said seminary" used in section 5?

Our contention is that even if the words "the seminary" in section 2 referred to the school building, the words "said semi-

nary," as used in section 5, clearly referred to the incorporated institution designated in the previous provisions as "The Chicago Theological Seminary" and "the seminary," and not to the school buildings.

First. Giving to the word "belonging" in section 5 its primary and ordinary meaning of *ownership*, the words "said seminary" in the same section could only refer to the corporation. (Argument, pp. 63-65.)

In *Gammon* v. *Gammon*, 153 Ill., 41, the court, referring to the word "belong," say (p. 47):

"The primary meaning of the word 'belong' as given by lexicographers is *'to be the property of.'* Such also is the *common* and *ordinary* meaning of the word."

The State Court recognizes in its opinion that it was necessary to its conclusion to give to the word "belong" a different meaning from this—its "primary" and "common and ordinary" meaning. The Court say (174 Ill., p. 182):

"It is undoubtedly true that the word 'belonging' *may* mean ownership and very often does, but that is not its only meaning. Webster's International Dictionary defines it *'That which is connected with* the *principal* or *greater* thing; an *appendage;* an *appurtenance.'*"

a. It is not the rule, as is here assumed, that because a word *may* have a different meaning from its primary and ordinary meaning it should therefore be given that meaning.

On the contrary, the rule is that the word should be given its primary and ordinary meaning unless other provisions of the Act show an intention to the contrary.

b. As we shall show more fully hereafter, if the word "belonging" is given the meaning given it by the definition quoted, it would give an unreasonable and absurd meaning to the provision, and one clearly not intended,—a mean-

ing which would exempt only the property "connected with the *principal thing*"—the school buildings—as "an appurtenance," leaving the "*principal thing*," the school buildings and grounds, not exempt.

c. That the word "belonging" was used in the sense of ownership is also shown by reference to the provisions of many other similar charters passed by the Legislature of Illinois at the same and other sessions, in which there were exemptions in the identical language, and the context shows that the word "belonging" could only be construed as being used in the sense of ownership. (See Appendix, pp. 5-13.)

Second. That even if "the seminary" in section 2 is given the meaning "the school buildings," the words "said seminary" in section 5 referred to the incorporated institution is further shown by the additional *points* stated *infra* as sustaining our contention.

2. Our construction of the exemption provision is forcibly confirmed by the adjudicated cases, in which like provisions were construed, and it was held, on grounds peculiarly pertinent to the case before the court, that similar general words, "belonging to" and "the college," "the institution," "the asylum," etc., referred to the corporation created by the act, and that all the property of the corporation was, therefore, exempt. (Argument, pp. 65–69.)

See the following cases cited at length in Argument, (pp. 66-69.)

County of Nobles v. *Hamline University,* 46 Minn., 316.

Asylum v. *New Orleans,* 105 U. S., 362.

President and Faculty of St. Vincent's College v. *Schaefer,* 104 Mo., 261.

3. If the meaning is given to the words "said seminary," and "belonging to," in the exemption provision, which the State Supreme Court found it necessary to give to them to reach the conclusion it did, the result is that the provision, as a whole, is given an unreasonable, and, in fact, absurd meaning. (Argument, pp. 69–73.)

(1) Substituting for the words actually used in section 5 ("said seminary" and "belonging to") the words which the Supreme Court of Illinois holds (*People* v. *Chicago Theological Seminary*, 174 Ill., 177), express the meaning it was intended they should have, *only* the particular property "*connected with* the *principal* or *greater* thing"—as "an appendage or appurtenance" or "appurtenant *to*" —"the particular property" would be exempt.

The "*principal* or *greater* thing," "the particular *property*" referred to as "the seminary"—the school buildings and grounds,—"with" which the property exempted is defined as "connected" as "an appendage" or an "appurtenance," would not be exempt, but, on the contrary, would be excluded from the exemption by the very language of the provision. (Argument, pp. 70-71.)

(2) What then would be exempt? It is plain that other *real estate* would not be "connected with" "the particular property" known as the seminary—the school buildings and grounds—as "an appendage" or an "appurtenance." (Argument, p. 71.)

Accordingly the State, acting on this decision, has taxed all the real estate *other than* the school buildings and grounds, and the taxes thus levied are the very taxes which the State Supreme Court has sustained as not within the exemption provision. (No. 140, Pr. Rec., 16-22; No. 265, Pr. Rec., 16-19.)

(3) It follows that, giving the language of the exemption

provision *the emaning given it by the State Supreme Court*, the only property which it was intended to exempt was *personal* property.

And in this view the only property which could by any possibility be within the exemption—giving its language the meaning given it by the State Supreme Court—would be *the furniture and apparatus in* the school buildings. (Argument, p. 72.)

It is familiar law that in giving construction to a statute an absurd or unreasonable meaning will not be attributed to the legislature if the language admits of any other construction.

Lau Ow Bew v. *United States*, 144 U. S., 47, 59.
People ex rel. v. *Gaulter*, 149 Ill., 39.

4. The decision of the State Supreme Court, in both cases, is based on a construction of its previous decision in 174 Ills., which gives to the exemption provision a meaning wholly different from the meaning given it by the same court in its opinion in 174 Ill., and one which it is impossible to derive from the words of the provision (Argument, pp. 73–75.)

When, in the two subsequent cases (the cases before the court), the state court, in applying its decision in 174 Ill., 177, came to define its previous construction in a form which would include in the exemption the property which had not been taxed, and exclude the property which had been, *an entirely new and different provision, wholly inconsistent with its actual decision in 174 Ill., was evolved.* (See No. 140, Pr. Rec., 54; No. 265, Pr. Rec., 31.)

As the result of this process of construing, in the opinions in the two cases before the court, the previous *decision*, which gave a construction to the exemption provision, the words

"belonging or appertaining to" in the provision in question are given the meaning "*used in immediate connection with,*" a meaning which they do not have either in the definitions adopted in 174 Ill., or in any definition given by any lexicographer. (Argument, p. 75.)

5. The construction of the State Supreme Court is based wholly on the erroneous view that, instead of construing the provision of exemption in a fair and liberal sense, so as to promote the charitable object for which the corporation was formed, it should be construed narrowly by applying the rules of strict construction, and that the express provision of the charter that "this act shall be construed liberally in all courts," should be given a construction contrary to its plain intention, which would in fact render it wholly meaningless. (Argument, pp. 75-85.)

Section 6 is as follows:

"Sec. 6. This act to take effect and be in force from and after its passage, and it shall be deemed a *public* act, and *shall be construed liberally in all courts* for the purposes therein expressed."

(1) The rule of strict construction does not apply to exemptions in favor of charitable corporations, but such exemptions should be construed liberally, to promote the charitable object for which the corporation was created. (Argument, pp. 76-81.)

Yale University v. *New Haven,* 71 Conn., 316.

Phillips Academy v. *Andover,* 175 Mass., 118.

Association for Colored Orphans v. *Mayor,* 104 N. Y., 581.

People v. *Sayles,* 50 N. Y. Supp., 8.

Long Branch Firemen's Relief Ass'n v. *Johnson,* 62 N. J. L., 625.

Sisters of Charity v. *Township of Chatham*, 52 N. J. L., 373.
State v. *Fisk University*, 87 Tenn., 233 .
M. E. Church v. *Hinton*, 92 Tenn., 88.

(2) Whatever the rule in the absence of an express provision in the charter—whether the rule of strict construction applies to an exemption provision in the charter of a charitable corporation or not—the legislature of Illinois, in granting this charter, expressed its intention (in section 6) not to leave the question open, by making the express provision on the subject, that the Act should be "*construed liberally in all courts.*" (Argument, pp. 81-83.)

For cases in which under similar statutory provisions, either abolishing the rule of strict construction as to all statutes, or providing that it shall not apply to particular statutes, the rule of liberal construction was held to apply in giving a construction to criminal and penal statutes, see

Commonwealth v. *Davis*, 12 Bush (Ky.), 240.
People v. *Soto*, 49 Cal., 67.
Hankins v. *People*, 106 Ill., 628.
Maxwell v. *People*, 158 Ill., 248.
Peterson v. *Currier*, 62 Ill. App., 163.

For a case in which a similar charter provision was referred to as requiring a liberal construction of a provision in the charter of Brown University, exempting its property from taxation, see

Brown University v. *Granger*, 19 R. I., 704.

(3) The construction of this provision by the State Supreme Court (174 Ill., at p. 181), that the word "purpose" in section 6 referred to the *intention*

of each provision, and that, before the rule of liberal construction can be applied, this *intention* must be *first ascertained, as to each provision,* by applying the ordinary rules of construction, *including the rule of strict construction,* would render the provision wholly meaningless. (Argument, pp. 84-85.)

6. The decision of the State Supreme Court is not only based on the erroneous view that the rules of strict construction apply, but on the wholly erroneous assumption, that under these rules "if the language (of a provision) is capable of a broader, or more restricted meaning, the latter must be adopted." Such is not the effect of the rules of strict construction, even on the assumption that they apply, but on the contrary, the words used, if "capable of" two meanings, should be given their primary and ordinary meaning in the absence of other language showing that a different meaning was intended, and such meaning as will best express the legislative intention. (Argument, pp. 85–89.)

Starting with this assumption as to the *effect* of the rule of strict construction (which we shall show is clearly erroneous), as the basis of its reasoning, the State Supreme Court finds that the two words "seminary" and "belonging," being "capable of" a different meaning, that meaning "*must* be adopted."

(1) This assumption as to the meaning of the rule of strict construction eliminates all consideration of the actual *intention* of the Legislature, or of the reasonableness of the particular meaning, and makes the mere fact that the word is "capable of" the two meanings, and that the one is "more restricted" then the other, conclusive of the question. (Argument, pp. 86-87.)

This assumption of the court as to the meaning of the rule of strict construction is wholly erroneous.

See authorities cited *infra.*

(2) The rule of strict construction does not require that if the language used "admits of two meanings," either one or the other of these two meanings "*must* be" adopted, or in any way change or override the other rules of construction, including the well settled rule that, where a word admits of two meanings, the natural and ordinary meaning should be adopted, in the absence of other provisions showing a contrary *intention.* (Argument, pp. 87-89.)

Endlich on the Interpretation of Statutes, Secs. 337, 466.

U. S. v. *Winn,* 3 Summ., 209 (quoted with approval in Black on Interpretation of Statutes, p. 290).

U. S. v. *Hartwell,* 6 Wall., 385, at p. 395.

Meadowcraft v. *People,* 163 Ill., 56, at p. 70.

7. The construction of plaintiff in error does not "extend the meaning of the words used, by implication," as erroneously held by the State Supreme Court. (Argument, p. 89.)

As we have already pointed out, to give the words "said seminary" the meaning for which we contend is, in any view, only to give to "seminary" the meaning it indisputably has in the title of the Act, and also in the preceding sections 1 and 4, and does not, therefore, "extend the meaning of these words by implication" or otherwise.

8. The construction of plaintiff in error is further decisively confirmed by a consideration of other similar charters containing provisions for exemption from taxation passed at the same and other sessions. (Argument, pp. 90–97.)

We have printed, and file with this brief as an Appendix, the material provisions of many of these charters, as forcibly and in fact decisively confirming our construction of the exemption provision in question.

That it is proper to refer to these other charters, passed by the same legislature, as an aid in ascertaining the meaning it was intended the words used in the particular provision should have, and as illustrating the application of the rule, see (Argument, pp. 90-91).

Vane v. *Newcombe*, 132 U. S., 220.

23 Am. & Eng. Ency. of Law, under the title "Statutes," p. 311.

Chase v. *Lord*, 77 N. Y., 1, at 18-19.

Middleton v. *Greeson*, 106 Ind., 18, at 24.

Levering v. *Philadelphia, Germantown & Norristown R. R. Co.*, 8 Watts & S., 459, at 463.

Reiche v. *Smythe*, 13 Wall., 162.

(1) On reference to the different charters passed by the same legislature, containing provisions for exemption from taxation, it will be seen that there are many passed at different sessions which provide by specific language for a *partial* exemption from taxation identical (or substantially so) with the exemption the State Court holds was *intended* by the provision in question. (See Appendix, pp. 1-5, and Argument, pp. 91-93.)

These provisions show that when the Legislature of Illinois made a *partial* exemption, such as the State Court has held was intended by the provision in question, it used specific and particular language to express that intention.

(2) We find the same provision for exemption from taxation, *in the identical language*, with the same title to the Act, a like corporate name, etc., as in the charter of plaintiff in error, in different charters incorporating similar educational institutions (including the Galena Theological Seminary, The Lake Forest University, etc.), passed by the

Legislature of Illinois *at the same and other sessions,* both before and after, in which there was no section like section 2, or other provision on which to base the reasoning which is the sole ground of the conclusion of the Supreme Court of Illinois. (See Appendix, pp. 5-13.)

Not only this, but in several of these different charters we find such references to the word "seminary" in other provisions as conclusively shows that the corporate entity was intended to be described by it. (See Appendix, pp. 6, 8, 12.)

It follows that, to sustain the construction of defendant in error, it must be held that, to express in the charter of plaintiff in error the partial and narrow exemption claimed, the legislature used the *identical language* which it had used, and continued to use, in *other* charters, to express a *total* exemption. (See Argument, pp. 94-96.)

(3) In a number of the special charters, passed at different sessions, the same word "located" (on which, as we have seen, the State Court bases its conclusion that "the seminary" in section 2 referred to the school buildings) is used in the *first* section in a connection which necessarily refers to the institution incorporated by the Act instead of the school buildings. (See Appendix, pp. 13-15.)

The only difference in the charter in question is that the provision as to the *location* is put in a separate section in connection with *the object.* But the word "located" was manifestly used in the same sense as in the other charters. (Argument, pp. 96-97.)

ARGUMENT.

I.

THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT OF THE STATE COURT, AND, IN THE EXERCISE OF THAT JURISDICTION, HAS POWER TO DETERMINE THE QUESTION AS TO THE CONSTRUCTION TO BE GIVEN TO THE PROVISION IN THE CHARTER OF PLAINTIFF IN ERROR EXEMPTING ITS PROPERTY FROM TAXATION.

1. In both cases the claim was made by plaintiff in error, in the State Court, that the subsequent revenue law, and the action of the State officers in levying the tax under it, violated the obligation of its contract of exemption from taxation, and the writs of error, brought to review the judgments of the State Supreme Court deciding the question thus raised adversely to plaintiff in error, present a federal question which this court has jurisdiction to determine.

In both the cases, on the application for judgment for the taxes, it was expressly claimed in the State trial court, by objections in writing, that this provision of the charter, having been accepted and acted upon, constituted a contract, and as such was protected by the Constitution of the United States. (No. 140, Pr. Rec., 16; No. 265, Pr. Rec., 16.)

It was sought by the subsequent law of 1872, and the action of the state authorities in levying the taxes under it, to attack and impair this exemption.

The validity of this law and of the action of the state officers in levying the taxes under it, were denied by the plaintiff in error in their objections filed in the State trial court on the express ground that it was in violation of the provision of the Federal Constitution; that no state shall pass

any law impairing the obligation of a contract. (No. 140, Pr. Rec., 16; No. 265, Pr. Rec., 16.)

In both cases the question thus presented was decided adversely to the plaintiff in error in the State trial court, and this judgment was affirmed by the State Supreme Court, the highest court of the state.

We have thus presented the three elements which, under the repeated decisions of this court, always confer jurisdiction:

(1) It appears that one of the questions mentioned in the Judiciary Act, that of "the validity of a statute or of an authority exercised under a statute of a state on the ground of its being repugnant to the Constitution," was directly raised and presented in the State Court.

(2) This question was decided by the State Court, and the decision was necessary to the judgment rendered in the case.

(3) The decision was against the right or claim asserted by the plaintiff in error under the Constitution of the United States.

In the following cases, in which the jurisdiction of this court was invoked, on the ground that the subsequent law and the action of the state officers in levying a tax under it, impaired the obligation of the contract of exemption, the court sustained the jurisdiction and enforced the obligation of the contract.

University v. *People,* 99 U. S., 309.
Asylum v. *New Orleans,* 105 U. S., 362.
State Bank of Ohio v. *Knoop,* 16 How., 378.
Home of the Friendless v. *Rouse,* 8 Wall., 430.

The Washington University v. *Rouse,* 8 Wall., 439.

Wilmington Railroad v. *Reid,* 13 Wall., 266.

Humphrey v. *Pegues,* 16 Wall., 244.

Pacific Railroad Co. v. *Maguire,* 20 Wall., 36.

2. The determination of the federal question presented, involves the decision of the question as to the proper construction of the exemption provision of the charter of plaintiff in error, and this court will, therefore, determine for itself, in the exercise of its appellate and revisory jurisdiction, the question of construction presented, irrespective of the decision made by the State Supreme Court.

It will be seen from the opinions of the Supreme Court of Illinois in both cases, that that court conceded that the provision for exemption from taxation in the charter of plaintiff in error constituted a contract, the obligation of which would be violated by the subsequent law, if the exemption provision was broad enough to cover the particular property on which the taxes were levied. (No. 140, Pr. Rec., 54; No. 265, Pr. Rec., 30-31.)

In both cases the court based its decision on the sole ground that, under a proper construction of the exemption provision, the property in question was not within the exemption, and that for that reason the subsequent law and the action of the state authorities under it did not violate the obligation of the contract.

The jurisdiction which this court exercises in reviewing the decision of the State Court is appellate and revisory.

The sole question which this court is asked to pass upon in the exercise of its appellate jurisdiction is: Was the contract between the state, on the one hand, and the plaintiff in error on the other, violated by the subsequent state law and the action of the state authorities under it?

The decision of this question involves determining, not only whether the provision of the charter exempting from taxation was in terms a contract, but also any question of construction as to its meaning or effect.

On a writ of error to review the judgment of a State Court, the decision of the State Court holding that, *as a matter of construction,* a particular charter provision did not grant the exemption or other right claimed, is not binding on this court, but the construction to be given to such a charter provision is an original question for this court to determine for itself in the exercise of its appellate and revisory jurisdiction.

University v. *People,* 99 U. S., 309.
Jefferson County Bank v. *Skelly,* 1 Black, 443.
Bridge Proprietors v. *Hoboken,* 1 Wall, 144.
State Bank v. *Knoop,* 16 How., 369.
Delmar v. *Insurance Co.,* 14 Wall, 668.
Houston & Texas Central R. R. Co. v. *Texas,* 177 U. S., 66, 77.
Columbia Water Power Co. v. *Columbia Electric Street Railway Co.,* 172 U. S., 475, 487.

These decisions are placed on two grounds—*first,* that the jurisdiction of this court, to determine on writ of error to the State Court whether in the particular case the obligation of the contract has been impaired, is an *appellate* jurisdiction, in the exercise of which it reviews the decision of the State Court and determines the questions involved for itself as the court of last resort; and, *second,* that if these questions of construction were left to the State Courts to determine, it would always be in their power to defeat the ac-

knowledged Appellate jurisdiction of this court by basing their decision on some ground of construction.

See,

State Bank v. *Knoop*, 16 How., 369, at 391.
Delmar v. *Ins. Company*, 14 Wall, 668.

3. In both the cases before the court the State Supreme Court expressly decided the federal question involved adversely to the plaintiff in error, and such decision was necessary to the judgment rendered.

1. *As to No. 265*, the *sole* question presented or passed on, either in the State trial court or in the State Supreme Court, was the single question, whether the subsequent state revenue law and the action of the state officers under it, in levying the particular tax, impaired the obligation of the contract.

The entire opinion of the State Supreme Court is as follows (No. 265, Pr. Rec., 30-31; *Chicago Theological Seminary* v. *People*, 193 Ill., 619):

"This is an appeal from a judgment ordering the sale of lands of appellant returned as delinquent for the non-payment of taxes for the year 1900. It was claimed by appellant that its said lands were exempt from taxation by the act incorporating it. These lands were not used in connection with appellant's seminary, as a part of the seminary grounds, but were in part vacant and in part improved, yielding rents for its support. In *People ex rel.* v. *Chicago Theological Seminary*, 174 Ill., 177, and in *Chicago Theological Seminary* v. *People ex rel.*, 189 *id.*, 439, *the precise question here involved, and between the same parties, was decided adversely to appellant. In those cases we held that the provision in appellant's charter that 'the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever,' refers only to property used in immediate connection with the seminary, and does not include*

other property which may be owned, held or rented by the corporation as an investment, even though the income derived therefrom is used for the support of appellant's school. Those cases are decisive of this, and the judgment of the County Court will be affirmed."

The record also contains a certificate by the Chief Justice of the State Supreme Court that there was drawn in question in the case in that court the validity of the Revenue Act of 1872, on the ground that it impaired the obligation of the contract in the charter of the plaintiff in error, and that the decision of the court was in favor of the validity of the statute. (No. 265, Pr. Rec., 31-32.)

The record in No. 265 also shows that in that case no claim was at any time made by either party, and no evidence was given or facts stipulated, *as to any prior judgment or judgments either in the County Court or in the two cases previously decided by the State Supreme Court.*

It is true that at the time the case was decided by the State Supreme Court the two previous decisions by that court, as printed in the published reports (*People* v. *Chicago Theological Seminary*, 174 Ill., 177, and *Chicago Theological Seminary* v. *People*, 189 Ill., 439), were referred to in the opinion in the case as controlling on the question, but the *judgments* in those cases were not in evidence or otherwise mentioned in the record and the reported *decisions* were referred to, not as *res adjudicata*, but as previous *decisions of the same court* on the particular question, and as, therefore, binding on it under the doctrine of *stare decisis*.

It also appears from the opinion in *People* v. *Chicago Theological Seminary*, 174 Ill., 177, that the particular case was reversed *and remanded* by the State Supreme Court "*for further proceedings* in accordance with the views here-

in (in the opinion) expressed," and for that reason, not being a *final* judgment, it was not subject to review by writ of error to this court.

Brown v. *Baxter*, 146 U. S., 619.
Rice v. *Sanger*, 144 U. S., 197.
Johnson v. *Keith*, 117 U. S., 199.

As to *Chicago Theological Seminary* v. *People*, 189 Ill., 439 (No. 140), it also appears from the record that, both at the time of the judgment in the County Court and of the decision by the State Supreme Court in No. 265, a writ of error had been sued out from this court to review the judgment, and the case was pending in this court.

2. *As to No. 140*, the record shows that in the State Trial Court, *in addition to the objection* that the levy of the tax was in violation of the obligation of the charter provision, the plaintiff in error *also set up*, by its objections, different prior judgments *rendered by the State County Court in favor of plaintiff in error* on application for judgments against the same property for taxes in different previous years, which *sustained* the objection that the levy of the tax was in violation of the obligation of the charter of plaintiff in error, and from which no appeals or writs of error were taken, and claimed that these prior judgments *of the State County Court* were *res adjudicata* of the question as to the proper construction of the charter provision. (No. 140, Pr. Rec., 17-19.)

In support of this *further objection*, based on the prior judgments of the State County Court, the facts, as to the entry of the former judgments by that court, and that no appeal or writ of error had been taken to review these judgments, were shown. (No. 140, Pr. Rec., 17-19.)

It was also stipulated in No. 140 (Pr. Rec., 43):

"That appeal was taken by the said applicant to the Supreme Court of the State of Illinois, and that the Supreme Court of Illinois June 18, 1898, *filed the opinion of the court, as set forth in 174 Ill., at page 177*, but that *no mandate has been issued* by the Supreme Court of Illinois remanding such cause to the County Court of Cook County, Illinois, and *that no transcript of the order of the Supreme Court of Illinois, remanding the cause to the County Court of Cook County, has ever been filed in the County Court of Cook County.*"

It thus appeared from the facts stipulated in No. 140 that the opinion in the case (174 Ill., 177), was filed June 18, 1898, and that at the date of the trial in the County Court, in No. 140, October 24, 1900, which was *more than two years after the opinion was filed*, no mandate remanding the case (174 Ill., 177), had been issued by the Supreme Court of Illinois, and no transcript of the order remanding the case had ever been filed in the County Court.

Section 83 of the Illinois Practice Act (Ch. 110, Starr & C. Ann. Stats. Ill., p. 3111) provided:

"When any cause or proceeding, either at law or in chancery, is *remanded* by the Supreme Court or Appellate Court, as the case may be, *for a new trial or hearing by the court in which such cause was originally tried*, the Supreme Court or Appellate Court, as the case may be, shall issue its mandate, reversing and remanding such cause directly to such trial court, and, *upon a transcript of the order* of the Supreme Court or Appellate Court, as the case may be, remanding the same, *being filed in the court* in which such cause was originally tried, *and* not less than ten days' *notice thereof* being given to the adverse party, or his attorney, *the cause or proceeding shall be reinstated therein.*"

Section 84 of the same act provided:

"Sec. 84. If neither party shall file such transcript *within two years* from the time of making the final order of the Supreme Court or Appellant (Appellate) Court, as the case

may be, reversing any judgment or proceeding, *the cause shall be considered as* ABANDONED, *and no* FURTHER ACTION SHALL BE HAD THEREIN."

Under this provision, as has been expressly held by the Supreme Court of Illinois, if the cause is not redocketed in the trial court within two years, it is so completely and finally *at an end* that the plaintiff must bring a *new suit* to enforce the cause of action.

Koon v. *Nichols*, 85 Ill., 155.

It appears from the opinion of the State Supreme Court, in No. 140, that in that court *both* of the objections of plaintiff in error to the judgment which had been raised in the County Court were presented and passed on by the court.

As to the *first* objection, the court said (No. 140, Pr. Rec., 54):

"*First.* The *first objection* made by appellant to the entry of judgment by the County Court against its lands, is *that its charter exempts from taxation all of its real estate.* We have already passed upon *this question* in *People* v. *Theological Seminary*, 174 Ill., 177. In the latter case, we held that Section 5 of the Act of 1855, incorporating the appellant, which provides 'that the property, of whatever kind or description, belonging or appertaining to said seminary, shall be forever free and exempt from all taxation for all purposes whatsoever,' refers only to property used in immediate connection with the seminary, and does not include other property which may be owned, rented or held by the said seminary as an investment, even though the income thereof is used solely for school purposes. *We are satisfied with the conclusions reached in People* v. *Theological Seminary, supra, and decline to further discuss the question there passed upon and settled. The objection, made by the appellant, based upon the ground of an alleged impairment of the obligation of its contract with the State of Illinois, is involved in this first objection and disposed of by the decision in relation thereto. It need not be separately considered. This*

court has merely construed appellant's charter, and given full force and effect to it as so construed."

As to the *second* objection, the court stated the objection as follows (No. 140, Pr. Rec., 54):

"*Second.* It appears that in each year for a number of years prior to 1897, appellant objected to the entry of judgment for general taxes in the County Court against certain of its lands upon the alleged ground that said lands were exempt from taxation. * * * *The contention now made in the present case is that the judgments so rendered by the County Court in these former years in its favor sustaining the objections so made by it, are in the nature of estoppels, and constitute a res adjudicata against the prosecution of the present proceeding."*

As to this objection, the decision of the court was that it could not be sustained on different grounds:

(1) That it did not appear from the records of the judgments rendered in the former years that the particular question was presented.

(2) That the judgment which it appeared was rendered in *People* v. *Chicago Theological Seminary*, 174 Ill., 177, was, as to the former judgments in favor of plaintiff in error, "an estoppel against an estoppel," and therefore had the effect to open up the whole matter and set it at large, and that the common law rule was that "one estoppel neutralizes the other and the question is left to be tried over." (No. 140; Pr. Rec., 57.)

(3) That the court was "*inclined* to hold that, under the circumstances above detailed, the last judgment (the judgment in 174 Ill.), is the controlling one."

As to this ground, the court stated its conclusion thus (No. 140, Pr. Rec., 62):

"Our *conclusion* upon this branch of the case is, that the judgment of reversal rendered by this court, as shown in

the case of *People* v. *Theological Seminary, supra* (174 Ill.), operated as a bar and complete defense *against the previous judgments rendered by the County Court and relied upon by the appellant herein.*"

It will be seen from the foregoing:

(1) That the State Supreme Court expressly passed on the question whether the subsequent law impaired the obligation of the contract, and held, following its previous decision in *People ex rel.* v. *Chicago Theological Seminary* (174 Ill., 177), that it did not, for the reason that the charter provision as construed by it did not cover the property on which the particular taxes were levied.

(2) That the question as to the effect of the former decision in *People* v. *Theological Seminary* (174 Ill., 177), other than as a previous decision on the question of construction, only arose in the case, and was only considered by the court *in answer to the objection made by plaintiff in error that the former judgments in the County Court were conclusive of the question.*

(3) The only *facts* as to the case in 174 Ill., shown in the record in No. 140, were that the court in that case "filed the opinion," "as set forth *in 174 Ill.*, at p. 177," and *the date* it was filed, and that at the time of the trial, which was more than two years after the filing of the opinion, the case had not been redocketed in the trial court and had therefore been *abandoned.* The *judgment,* if any, entered by the State Supreme Court in pursuance of its *opinion, was not given in evidence or otherwise referred to in the record,* as would have been necessary even to present the claim that the former *judgment* in the case was *res adjudicata* as to the question.

(4) It appeared in the case that the entire proceeding, in which the decision in *Chicago Theological Semi-*

nary v. *People* (174 Ill.), was rendered, *had been abandoned by the state by its failure to redocket the case in the trial court within the time prescribed by statute, and was as effectually out of court as if it had been, in fact, redocketed and dismissed for want of prosecution.*

(5) As a necessary consequence of all this there was no *judgment* which was *res adjudicata* at the time of the trial in No. 140, but the utmost effect which could be given to the decision in *People ex rel.* v. *Chicago Theological Seminary* (174 Ill.), was as a prior *decision by the same court* of the particular question under the doctrine of *stare decisis*, which, whatever effect might be given to it by the State Supreme Court, would not be in any way binding on this court in the exercise of its appellate and revisory jurisdiction as the court of last resort.

The record in No. 140 also contains the following certificate by the Chief Justice of the State Supreme Court (No. 140, Pr. Rec., 67):

"I do hereby certify that in the above entitled cause there was drawn in question in said Supreme Court of the State of Illinois, the validity of a statute of the State of Illinois, being the general revenue act of the State of Illinois, approved March 30, 1872, and in force July 1, 1872, entitled: 'An act for the assessment of property and for the levy and collection of taxes,' with its amendments, on the ground that said general revenue act of the State of Illinois impaired the obligation of the contract arising from the charter granted to said The Board of Directors of the Chicago Theological Seminary, the appellant, by the State of Illinois, and was repugnant to the Constitution of the United States, and that the decision of said Supreme Court of Illinois was in favor of the validity of said statute."

II.

THE PROVISION IN THE CHARTER OF PLAINTIFF IN ERROR EXEMPTED FROM TAXATION THE PROPERTY IN QUESTION, AND, FOR THAT REASON, THE LAW UNDER WHICH THE TAXES WERE LEVIED, IMPAIRED THE OBLIGATION OF THE CONTRACT AND THE JUDGMENT SHOULD, THEREFORE, BE REVERSED.

The Act was entitled: "An Act *to incorporate* the Chicago Theological Seminary."

Section 1 provided that the persons named and their successors be created a body corporate, to be styled: "*The Board of Directors of* the Chicago Theological Seminary," with power to sue, "to acquire, hold and convey property, real and personal," "to make and alter a constitution and by-laws for the conducting and *government* of *said institution* and *fully to do whatever may be necessary to carry out the object of this act of incorporation.*"

Section 2 provided:

"That the *seminary* shall be located in or near the City of Chicago. *The object* shall be to furnish instruction and the means of education to young men preparing for the gospel ministry, and the institution shall be equally open to all denominations of Christians for this purpose."

Section 3 provided as to the number of the directors and the manner of their election.

Section 4 provided that "the Board of Directors shall have power to appoint an executive committee," etc., and "such *officers,* professors and teachers as the *government* and instruction of *the seminary* may require, and prescribe their duties, to remove any of them for sufficient reasons," and to confer degrees.

Section 5, the exemption provision, was as follows:

"Sec. 5. That the property, *of whatever kind or description, belonging or appertaining to said seminary*, shall be forever free and exempt from all taxation for all purposes whatsoever."

Section 6 (the last section) was as follows:

"Sec. 6. This act to take effect and be in force from and after its passage, and it shall be deemed a *public* act, and *shall be construed liberally in all courts* for the purposes therein expressed."

For the charter in full, see Statement, *supra*, and No. 140, Pr. Rec., 26.

It will be observed at the outset that the language of the exemption—"*the* property *of whatever kind or description* belonging *or* appertaining to said seminary"—is the broad general language appropriate to express a *total* exemption, and wholly inappropriate to express the narrow and limited *partial* exemption, which the Supreme Court of Illinois has decided it was intended to express.

It is a significant fact in this connection that, in each of the ten different years in which taxes were levied on the property in question, prior to the taxes involved in the case in 174 Ill., the County Court held that a *total* exemption was intended, and, therefore, rendered judgments for plaintiff in error, *and that during all this period, the State did not even raise a question as to the correctness of this construction by an appeal to the Supreme Court from any one of the judgments.*

The ruling of the Supreme Court of Illinois is that the legislature intended by this language only to exempt—to use its own words—"the property *used in immediate connection with* the seminary" (the school buildings). (No. 140, Pr. Rec., 54; No. 265, Pr. Rec., 31.)

Accordingly, the State, acting on this construction, has not taxed (to use the language of the State Supreme Court) "the lots *occupied by buildings wherein is given instruction*," but has taxed all the other property of the plaintiff in error, although it is expressly stipulated that the property thus taxed was acquired, and is held, solely "for the promotion of the objects mentioned in its charter," and that the income of the property is used *solely* for the purpose contemplated in its charter. (No. 140, Pr. Rec., 26; No. 265, Pr. Rec., 20.)

In neither of the opinions in the two cases before this court is the question of the construction of the exemption provision considered. In both cases the court refers to and follows the decision in *People ex rel.* v. *Chicago Theological Seminary*, 174 Ill., 177, and adopts the conclusion there reached as giving the proper construction to the exemption provision. (No. 140, Pr. Rec., 54; No. 265, Pr. Rec., 31.)

The conclusion of the state court in both cases, therefore, rests on the grounds and reasoning set forth in the opinion in *People ex rel.* v. *Chicago Theological Seminary*, 174 Ill., 177, which are, in effect, re-adopted in the opinions in the two cases.

An examination of the opinion (174 Ill., at pp. 181–182) will show that the conclusion of the State Supreme Court was based on the following grounds, all of which are essential to the conclusion:

(1) That the rules of strict construction as to exemptions from taxation, which are stated at length, should be applied in giving construction to the provision.

(2) That the provision of section 6, that the act shall be *construed liberally in all courts*," applies only *after* the *purpose*, *i. e.*, the *intention* of *each* provision has been

ascertained by applying the *ordinary* rules of construction, including the rule of *strict* construction; and that when the purpose, *i. e.*, the *intention* of the provision, has been thus ascertained, "liberal rules of construction, *if necessary*, are to be resorted to *to give effect to* such purpose."

(3) That under the rules of strict construction which, it is held, should be applied, if the language of the provision "is *capable of* a broad *or* more restricted meaning, the latter *must* be adopted."

(4) That, accordingly, as the words "the seminary," in the second section of the act refer (as the court assumes), to "certain *property*," "particular *property*," "mentioned" in the section, viz., the school buildings and grounds, the words "said seminary," in section 5 (the exemption provision), should be held to mean this "particular property"—the school buildings and grounds, and not the incorporated institution referred to in the title of the act and in sections 1 and 4, as "The Chicago Theological Seminary" and "the seminary."

It will be seen that the ruling of the State Court, thus narrowing the exemption expressed in the broad general language of the provision to the specific exemption only of "the property *used in immediate connection with* the seminary," is based wholly on the words "said seminary" in section 5, and the view that these words refer to "particular *property*," (the school buildings and grounds), and not to the incorporated institution.

The question, therefore, is: To what did the words "said seminary" in the exemption provision refer; to the *institution* incorporated by the act, or to the *place* where instruction was to be given—the school buildings and grounds?

1. The words, "said seminary," in the exemption provision, referred to the corporation created by the act, and designated in the title as the Chicago Theological Seminary, and not to the school buildings and grounds, as held by the State Supreme Court, and this being so, the exemption provision indisputably exempted from taxation the property against which the judgments were rendered.

The first mention of "the seminary" in the act is in the title.

It is well settled that the title of an act may properly be referred to to ascertain the legislative intention.

Holy Trinity Church v. *United States*, 143 U. S., 457, 462.

Smythe v. *Fiske*, 23 Wall., 374, 380.

Heirs of Emerson v. *Hall*, 13 Pet., 409, at 413.

Bell v. *Mayor*, 105 N. Y., 144.

President, etc., of St. Vincent's College v. *Schaefer*, 104 Mo., 261.

The act is entitled, "An Act *to incorporate* the Chicago Theological Seminary." (No. 140, Pr. Rec., 26: No. 265, Pr. Rec., 21.)

Here was an express declaration in the title of the act that its object was "to incorporate" the institution referred to and described in the title as "The Chicago Theological Seminary."

There can be no room for question that this first mention of the "Chicago Theological *Seminary*" referred to the institution incorporated by the act, and not "to the *property*," the school buildings, etc.

In *Heirs of Emerson* v. *Hall*, 13 Pet., 409, an act of Congress was entitled "An act for the relief of Beverly Chew, the *heirs* of William Emerson, deceased, and the *heirs* of Edward Lorrain, deceased." In the body of the act it was

provided that the money directed to be paid should be paid "to the said Beverly Chew and the *legal representatives* of the said William Emerson and Edward Lorrain."

This court, in holding that the intention was that the payments should be made to the *heirs* and not the *legal representatives*, say:

"It (the government) has, under *the title* of an act 'for the relief of the *heirs* of Emerson,' directed, in the body of the act, the money to be paid to his *legal representatives*. That the *heirs* were intended by this designation is clear."

In *Bell* v. *Mayor, etc., of N. Y.*, 105 N. Y., 139, the court, (PECKHAM, J.), in giving construction to an act, say (p. 144):

"The *title* of an act may be regarded * * * for the purpose of arriving at the real meaning of the legislature. * * * By *the title the purpose of this act is evident* and would include just such a case as is now before us."

See, also, in this connection, *President, etc., of St. Vincent College* v. *Shaefer*, 104 Mo., 261, cited at length, *infra*.

Again section 4 (the section immediately preceding the one in question) provides "that the board of directors shall have power to appoint * * * such *officers*, professors and teachers, as the *government* and instruction of *the seminary* may require, and prescribe their duties, and remove any of them for sufficient reason."

Here again, it is clear that the word "seminary" does not refer to the "particular *property*"—the school buildings and grounds—but to the institution which was incorporated by the act.

It was this institution and not the "*property*"—the school buildings, etc.—which was to have "officers," for its "government" and "professors and teachers" to give "instruction," whom the board of directors of the

incorporated institution were authorized by this section to appoint and remove, and whose duties they were to prescribe.

It is true that, as was customary in the early charters of incorporation, it was provided in section 1 that the corporate name should be "*The Board of Directors of* the Chicago Theological Seminary," and that in the exemption provision this full corporate name is not used, and it is apparently on this that the state court bases its conclusion that, "To say that 'said seminary' was intended to mean the corporation is *to extend the meaning by* implication."

Similar corporate names are found in all the earlier charters; those creating railroad corporations, incorporated banks, etc., as well as charitable institutions, such as "The President and Board of Directors of," etc. But it was not therefore necessary or customary to always use the cumbersome full name when the corporation was referred to.

This long and unwieldly name of the corporation, "*The Board of Directors of* the Chicago Theological Seminary," is only used once in the charter. It does not even appear in the title of the act, but the corporation is there called "The Chicago Theological Seminary." After the mention of the full corporate name in the first section, the corporation is referred to in the charter as "*said* institution," or "*said* seminary."

In the first section, after the name, it is referred to as "*said* institution," although nothing was said before as to any institution, and the only reference that the words "said institution" can have must be to the corporation created by the act.

While this cumbersome title, "*The Board of Directors of*

the Chicago Theological Seminary,'' was made the formal name of the corporation, this did not exclude the use, in referring to the incorporated institution, of such other appropriate general description as would properly designate it.

On the contrary, instead of using the full corporate name, "*The Board of Directors of* the Chicago Theological Seminary,'' it was natural and appropriate to use the words "*said* seminary'' to designate the incorporated institution referred to in the title of the act as "The Chicago Theological Seminary,'' and again in section 4 as "the seminary.''

This use of the shorter designation instead of the full, formal name, "*The Board of Directors* of the Chicago Theological Seminary,'' is illustrated in the very title of the act, in which the phrase "The Chicago Theological Seminary'', is used to designate the institution incorporated by the act.

So, in the proceedings in the County Court, in the return of delinquent property on which the judgments for taxes were based, all the different pieces of property were described in the column showing "Owner's Name,'' as belonging to "The Chicago Theological Seminary,'' instead of using the full corporate name. (No. 140, Pr. Rec., 12.)

So, in the opinion of the Supreme Court of Illinois, in No. 140 (Rec., 54), the court, after quoting the exemption provision, states as its conclusion that the provision "refers only to property used in immediate connection with *the seminary*, and does not include other property which *may be owned, rented or held by* SAID SEMINARY as an investment, even though the income thereof is used solely for school purposes.''

Here the words "said seminary"—the precise words of

the exemption provision—were indisputably used by the state court itself to designate the incorporated institution, and that too although it used in a previous part of the same sentence the words "the seminary" in a more restricted sense.

In fact, that the general words "the Chicago Theological Seminary" were appropriate to designate the incorporated institution is recognized in the very name itself, "The Board of Directors *of* the Chicago Theological Seminary."

The seminary buildings had no board of directors. The Board of Directors referred to in this corporate *name* as "The Board of Directors *of* the Chicago Theological Seminary," were the directors of the incorporated institution created by the act and referred to in its title.

There was therefore in the very name itself "The Board of Directors *of* the Chicago Theological Seminary" the same recognition of the general words "The Chicago Theological Seminary" as an appropriate designation of the incorporated institution, as in the title of the act, "An Act *to incorporate* the Chicago Theological Seminary."

It was to this "Chicago Theological Seminary" incorporated by the act, and referred to both in the title and in the corporate name as "The Chicago Theological Seminary", and again in section 4 as "the seminary", that the words "*said* seminary" in Section 5 referred.

As forcibly confirming this construction we have the fact that in a number of different charters, passed at different sessions of the same legislature, there was the same formal name, "The Board of Directors of —— Seminary," and an exemption provision in the *identical language* of the one in question, in which the same words, "said seminary," were used, and as to which there was no possible room for the

argument of the State Supreme Court that they referred to "particular property"—the school buildings, etc., and they therefore indisputably and necessarily referred to the corporation. (See *infra* and Appendix, pp. 5–13.)

In Angel and Ames on Corporations, Sec. 99, the author says:

"The *name* of a corporation frequently consists of several words, and *an omission or alteration of some of them is not material.*"

In *Marine Bank of Baltimore* v. *Bias*, 4 Har. & J. (Md.), 338, suit was brought against a corporation by its corporate name, "*The President and Directors of* the Marine Bank *of Baltimore.*" In the declaration the corporation was described as "said Marine Bank," and it was contended that judgment could not be entered on the declaration, on the ground that there was no such corporation as the "Marine Bank." But the court overruled the objection and entered judgment.

In *President and Faculty of St. Vincent's College* v. *Schaefer*, 104 Mo., 261, by an act passed in 1843, the legislature constituted certain persons named a body corporate by the name of "*The President and Faculty of* St. Vincent's College." The institution was to be "established" in the City of Cape Girardeau.

An act passed in 1853, entitled "An Act to exempt certain property from taxation," provided that:

"All the real estate and appurtenances now *belonging to* the St. Vincent *College* and St. Vincent Female *Academy, in the County of Cape Girardeau* * * * be and the same is hereby exempt from the payment of taxes for state or county purposes."

It will be seen that there was in the act incorporating the college the same cumbersome corporate title, "*The President and Faculty of* St. Vincent's College," and, in the

exemption provision, the same use of the general designation, "St. Vincent's *College*," instead of the full corporate name, and the same words, "*belonging* to." There was, therefore, the same basis for giving to the provision the construction given by the state court to the provision in question, that the words "*belonging* to" and "*college*" were "capable of" the "more restricted meaning," etc., "connected with," the "particular property," etc., *i. e.*, the college buildings, etc.

The court, in holding that the exemption was a total exemption of all the property of the corporation, say (pp. 267, 268):

"The language of the act of 1853 is *clear and free from ambiguity*. It exempts the real and personal property then *belonging* to St. Vincent's *College* 'from the payment of taxes for state or county purposes, so long as the same or the proceeds thereof shall be used for or applied to educational purposes.' * * *

It is insisted that the act of 1853 does not confer the immunity from taxation upon the *plaintiff*, because *the plaintiff is not named therein*. The original act of 1843 is entitled, 'An Act incorporating St. Vincent's College,' while in the body of the act the institution is incorporated by the name of '*The President and Faculty of* St. Vincent's College'; and the exempting act speaks of all real estate, etc., *belonging to* the 'St. Vincent College.' *The objection is too technical to deserve much consideration; for there can be no doubt but the last act refers to the corporation created by the first one. The* TITLE *of the first act is* QUITE CONCLUSIVE. *The variance is immaterial, for the two names are substantially the same.*"

In *Nobles* v. *Hamline University*, 46 Minn., 316 (cited at length *infra*) there was the same corporate name, "*Trustees of* the Hamline University of Minnesota," and it was expressly held that like general words in the exemption provision, "*the* property *belonging* to *the institution*," referred to the corporation and therefore created a total exemption.

We have thus shown that the word "seminary" was clearly used in the act as referring to the corporate institution: (1) in the title; (2) in the corporate name; and (3) in section 4.

Our contention is that it was to this incorporated institution, mentioned in these different preceding provisions as "The Chicago Theological Seminary" and "the seminary," that the words "*said* seminary" in section 5 clearly referred.

There is only one other mention of "the seminary" in the act.

Section 2 provides (No. 140, Pr. Rec., 27):

"Section 2; That *the seminary* shall be located in or near the City of Chicago. The *object* shall be to furnish instruction and the means of education to young men preparing for the gospel ministry," etc.

The Supreme Court of Illinois bases its entire conclusion on the words "the seminary" in this preceding provision, and, assuming that the words "the seminary," as used in section 2, refer to "certain *property*," "particular *property*"—the school buildings—concludes that therefore the words "said seminary" in section 5 were used in the same sense, and for that reason referred to the school buildings, etc., and not to the incorporated institution.

The court (174 Ill. at p. 182), said:

"The second section of the charter mentioning certain *property* to be located in or near the City of Chicago, and which is denominated 'the seminary,' we think the words in the fifth section, 'said seminary,' refer *to that particular property*."

It will be seen that the court here bases its conclusion wholly on these grounds:

First. That (as the court assumes) the word "seminary"

in section 2 is used in the sense of "*certain property,*" the school buildings, etc.

Second. That the word "seminary," being used in this sense in section 2 (as is assumed), it was therefore used in the *same* sense in section 5.

As to these grounds on which the entire ruling is based:

(1) The court *assumes* without giving any reasons that the word "seminary" in section 2 refers to "certain *property*"—the school buildings and grounds.

We have already seen that the word "seminary" was in fact three times used in other provisions of the Act to designate the incorporated institution, and the rule is that the same word being used in section 2 it will be presumed that it was there used in the *same* sense, unless a contrary intention is shown.

In determining the sense in which the word "seminary" was used in the sentence, "That the seminary shall be located in or near the City of Chicago," the immediately following sentence is most significant. It reads: "The *object* shall be to furnish instruction and the means of education," etc. Here is a clear reference to the "seminary" referred to in the immediately preceding sentence. It was as if the provision had read "the object *of said seminary,*" etc.

It is equally clear that "the particular *property*"—the school buildings and grounds—was not referred to. 'The *object*" referred to—"to *furnish* instruction and the means of education," etc., was the object of the *incorporated institution* and not of the mere buildings, etc.

This was recognized in the opinion in 174 Ill., where the court say (p. 179):

"The second section provides that *the seminary* shall be located in or near the City of Chicago; that *its* object shall be to furnish instruction and the means of education to young men preparing for the gospel ministry."

It is submitted that "the seminary" here referred to as having for "its object" to "furnish instruction and the means of education," etc., was not "certain *property*,"—the school buildings—but the institution which was incorporated by the Act.

The assumption of the opinion that "the seminary" mentioned in section 2 was "particular property" is apparently based on the fact that the word "located" is used in connection with it, and that therefore the *property*—the school buildings—and not the institution incorporated by the Act was referred to.

The court seems to assume that because of the use of this word "located" in the sentence, "that the seminary shall be *located* in or near the City of Chicago," "the seminary" necessarily meant the school buildings as distinguished from the institution which was incorporated by the Act.

As we have seen, in both the title of the Act and in section 4 "the seminary" was clearly used as referring to the institution incorporated by the Act. And it was therefore presumably used in the same sense in section 2, unless the use of the word "located" excludes and necessarily gives it the meaning "school buildings."

So far from the word "located" necessarily referring to the school buildings, it was a proper and customary use of the word to use it as referring to an incorporated institution such as was created by the Act.

The precise word "located" is frequently used in char-

ters and other statutes as applied to corporations. At common law it was an attribute of every corporation that it had a *locality*. Its *locality* was the place where it carried on its operations—where it did business.

In Angel and Ames on Corporations, Sec. 103, the author says:

"A Corporation, it is said, should be constituted as *of some place.*"

In *Sangamon & Morgan R. R. Co.* v. *County of Morgan*, 14 Ill., 163, a railroad passed through both Sangamon and Morgan Counties, and the court, in holding that the corporation was *located* in Sangamon County, in which it had its principal office, and that therefore its personal property should be taxed in that county and not in Morgan County, say (pp. 165, 166):

"The *location* or *residence* of the corporation must be considered to be in the state by whose laws it was created, and that residence must be *where its principal office or place of business is.* * * * In Morgan County the Corporation has no such *location;* the principal office of the company is in Sangamon County, where its principal and managing agent resides and where the personal property is kept when not in active service. In Morgan County it has no *locality.*"

In *Bristol* v. *Chicago & Aurora R. R. Co.*, 15 Ill., 436, the *principal office* of the company was in Cook County. The court, in holding that the company "*resided*" in Cook County, said (p. 437):

"It (the corporation) *dwells* in the place *where its business is done.* It is *located* where its franchises are exercised. * * * Having *located* itself there, it cannot now question the jurisdiction of the courts of Cook County."

Section 57 of the National Banking Act provides:

"Suits, actions and proceedings against any association

(national bank) may be had * * * in any state, county or municipal court in the county or city in which said *association* is *located*, having jurisdiction in similar cases."

In *Charlotte National Bank* v. *Morgan*, 132 U. S., 141, this court, in passing on this provision, refers to "the county or city in which such *associations* were *located*" (p. 145), "the county or city in which it (the Association) is *located*" (p. 145).

The language and reasoning of these authorities is peculiarly appropriate to an educational institution like the plaintiff in error, which necessarily had a location, and the location of whose educational operations and of its business, which would be only an incident to its main purpose, would naturally and properly be the same.

It was therefore entirely appropriate to use the word "located" as applied to the institution to which the Act gave a corporate existence, and we submit that was to this incorporated institution, which was already referred to in the title and in the subsequent section 4 as "The Chicago Theological Seminary" and "the seminary," to which section 2 referred as "the seminary."

That the word "located," as used in different special charters of this character, does not necessarily mean property, but is in fact used as referring to the incorporated institution, is further conclusively shown by reference to other similar charters passed by the same legislature in different years, in which the precise phrase was used in such a connection that it could only refer to the incorporated institution. (See *infra* and Appendix, pp. 13-15.)

(2) But even if it is assumed that the words "the seminary" in the particular section 2 referred to "certain property," the school buildings, etc., it does not follow, as the

court assumes, that the words "said seminary" in the subsequent section 5, which related to a wholly different subject, also referred to this "property," and not to the incorporated institution.

Whatever meaning is given to the words "the seminary" in section 2, the question is in what sense was "said seminary" used in section 5?

The question is, reading the language of section 5 in connection with the other provisions of the Act, and its general purpose, and having reference to the natural and ordinary meaning of the words used, what was the legislative intention?

Did the words "said seminary," as there used, refer to the incorporated institution designated in the previous provisions as, "The Chicago Theological Seminary" and "the seminary," or to the school buildings?

As showing that the incorporated institution was referred to, we have, in the first place, the fact, that, giving to the word "belonging" in section 5 its primary and ordinary meaning of *ownership*, the words "said seminary" in the same section could only refer to the corporation.

It is a familiar rule that words and phrases used in a statute should be given their primary and ordinary meaning, unless it appears from other provisions of the act that it was the legislative intention that they should have a different meaning.

In *Gammon* v. *Gammon*, 153 Ill., 41, the court, referring to the word "belong," say (p. 47):

"The primary meaning of the word 'belong' as given by lexicographers is *'to be the property of.'* Such also is the *common* and *ordinary* meaning of the word."

If the meaning is given to the word "belong" in the pro-

vision in question, which we have seen the Supreme Court of Illinois has expressly held is "the primary" and "common and ordinary meaning" of the word, it follows as a necessary consequence that the words "said seminary" must be construed as referring to the only entity mentioned in the charter which had the capacity to own property—the institution incorporated by it.

This the State Court in fact recognizes in its opinion, and that it was therefore necessary to its conclusion to give to the word "belong" a different meaning from that which in the decision quoted from 153 Ill. it held was its "primary" and "common and ordinary" meaning.

The court say (174 Ill., p. 182):

"It is undoubtedly true that the word 'belonging' *may* mean ownership and very often does, but that is not its only meaning. Webster's International Dictionary defines it *'That which is connected with* the *principal* or *greater* thing; an *appendage;* an *appurtenance.'*"

The court, having thus found that "ownership" is not the *only meaning* which the word "belong" has, assumes that because it *may have* the other meaning given in the definition quoted from Webster, it was *therefore the intention of the Legislature* that it should have that meaning.

In the first place it is not the rule, as is here assumed, that because a word *may* have a different meaning from its primary and ordinary meaning it should therefore be given that meaning.

On the contrary, the rule is that the word should be given its primary and ordinary meaning unless other provisions of the act show an intention to the contrary.

Again, as we shall show more fully hereafter, if the word "belonging" is given the meaning given it by the definition quoted, it would give an unreasonable and absurd meaning

to the provision, and one clearly not intended,—a meaning which would exempt only the property "connected with the *principal thing*"—the school buildings—as "an appurtenance," leaving the "*principal thing*," the school buildings and grounds, not exempt.

That the word "belonging" was used in the sense of ownership is shown not only by the fact that this is the primary and ordinary meaning of the word, and the only meaning which would avoid the absurdity pointed out, but also by reference to the provisions of many other similar charters passed by the Legislature of Illinois at the same and other sessions, in which there were exemptions in the identical language, and the context shows that the word "belonging" could only be construed as being used in the sense of ownership.

So in many of these charters, in which the same words "belonging or appertaining to said seminary" were used in exemption provisions identical in language with the one in question, there was no preceding provision which left room even for the argument made by the Supreme Court that *ownership* was not intended, and that the word was used in the narrow sense given it by that court. (See *infra*, and Appendix, pp. 5-13.)

That the words "said seminary," in Section 5, should be held to refer to the incorporated institution, even if "the seminary" is given the meaning of the school buildings, is further shown by the additional points stated *infra* as sustaining our construction.

2. Our construction of the exemption provision is forcibly confirmed by the adjudicated cases, in which like provisions were construed, and it was held, on grounds peculiarly pertinent to the case before the court, that similar general words,

"belonging to" and "the college," "the institution," "the asylum," etc., referred to the corporation created by the act, and that all the property of the corporation was, therefore, exempt.

In *County of Nobles* v. *Hamline University*, 46 Minn., 316, the act incorporating Hamline University, passed March 3 1854 (Laws of Minn., 1854, p. 105), was entitled: "An Act *to incorporate* the Hamline University of Minnesota." The act provided that the persons named should be a body corporate, to be styled the "*Trustees of* the Hamline University of Minnesota," * * * for the purpose of establishing, maintaining and conducting *an institution of learning* for the education of youth of both sexes.

Section 10 provided:

"This *institution* shall be under the patronage of the Wisconsin Annual Conference of the Methodist Episcopal Church, or of such conference as may be formed out of the Wisconsin Conference, in the bounds of which *the said institution* may be *located.*"

Section 11 provided:

"All corporate property *belonging to the institution*, both real and personal is and shall be free from taxation."

Section 13 of the act, which was identical with Section 6 of the act in question, provided:

"This act shall be *construed liberally in all courts* for the purposes herein expressed."

It will be seen that, in this act, there was the same corporate name as in the act in question,—"*The Trustees of* Hamline University of Minnesota." There was the same use in the exemption provision of a general term, "the institution," instead of the corporate name, and of the same words "belonging to." There was also the same use of the word "locate," as applied "to the *said institution*." It was contended in that case as in this that the words "the institution", in the exemption provision, referred to the place

and not to the corporation, and that therefore the exemption was limited to property directly used and occupied by the university.

The Supreme Court of Minnesota in holding that all the property of the corporation was exempt from taxation under this provision, say (pp. 317, 318):

"The appellant claims * * * (3) that the terms of the charter above cited exempt from taxation only 'the University itself, and the necessary grounds for its proper use.' * * * The third proposition is based upon *an untenable attempted distinction between the 'institution' and the 'corporation.'* The 'institution' established by the act was a body corporate to be known by the name of 'Hamline University of Minnesota.' It is perectly apparent that all through the act the words 'university' and 'institution' *are used as synonymous, and that both words are used as meaning the corporate body.* The term 'institution,' although *sometimes used as descriptive* of the establishment or place where a business is carried on, *properly means an association or society organized or established for promoting some specific purpose.* Webster Dict.; *Morris* v. *Lone Star Chapter*, 68 Tex., 698 (5 S. W. Rep., 519); *Gerke* v. *Purcell*, 25 Ohio St., 229, 244; *Humphreys* v. *Little Sisters of the Poor*, 29 Ohio St., 201. It is evidently in this sense that the word is used in this act. The expression 'all corporate property *belonging to* the institution' clearly shows, when taken in connection with the whole act, that the legislature did not intend to distinguish between property of the 'institution' and the 'corporation.' *The institution, as distinguished from the corporation, has no being, and is incapable of owning property. Had it been intended to limit the exemption to property directly used and occupied by the University, different language would have been used.*"

Asylum v. *New Orleans*, 105 U. S., 362, was a writ of error brought to review a judgment of the Supreme Court of Louisiana, which sustained the validity of a tax imposed by the authorities of the City of New Orleans on certain property of the plaintiff in error, the St. Anna's Asylum.

St. Anna's Asylum was a charitable institution which was incorporated by an act of the legislature of Louisiana, approved April 9, 1853, for the purposes indicated by its name.

The sixth section of the act provided as follows:

"Sec. 6. Be it further enacted, etc., that the said corporation shall enjoy the *same exemption* from taxation as was enacted in favor of the 'Orphan Boys' Asylum of New Orleans' by the act approved March 12, 1836, entitled 'An Act for the relief of the Orphan Boys' Asylum of New Orleans.'"

The act relating to the "Orphan Boys' Asylum of New Orleans," referred to in this section, provided as follows:

"That from and after the passage of this act all the property, real and personal, *belonging to* the Orphan Boys' *Asylum* of New Orleans be and the same is hereby exempted from all taxation, either by the state, parish or city in which it is situated, any law to the contrary notwithstanding."

It thus appears that in this case there was the same use of a general word, "asylum," which could refer either to the *place* known as the "asylum," or the incorporated institution, and of the word "belonging" which, in addition to its primary meaning, "ownership," had the different meaning, "connected with," etc., given to it by the Supreme Court of Illinois. There was, therefore, the same basis for giving to the provision the narrow and restricted meaning which the Supreme Court of Illinois gave to the provision in question.

The property on which the tax was levied was a cotton press owned by the corporation, the title to which was derived by devise, and the income from which was applied to maintain the charity. While the precise question of construction does not appear to have been raised, this court had occasion to pass upon the meaning of the provision,

and held that it was clear and free from ambiguity, and exempted all the property of the corporation from taxation, and for that reason reversed the judgment of the state court.

The court (Mr. Justice Bradley) say (pp. 365, 369):

"The language of the exemption is *so explicit and so broad*, and comes in after so many allusions to property which it is supposed the corporation might acquire, other than that which would be directly used for food and shelter to the destitute and helpless persons under its care, that *no doubt can be entertained as to its literal application to all the property of the society which it would be lawful and proper for it to possess.* The funds on which it relies for carrying on its work, however invested, whether in stocks, real estate, or otherwise, no less than the asylum building itself, are clearly embraced in the terms of the exemption; *and to exclude them from its operation would require the insertion or addition of words which the legislature did not see fit to express.* * * *

It is also said that, in order to constitute a contract, the grant ought to be *clear and free from all ambiguity and doubt*, and *not susceptible of* a different construction. We think it is so in this case. *The contract is not a matter of inference or presumption. It is distinctly expressed in the act of incorporation. Indeed, a clearer case could hardly be made.* * * *

We think it difficult to conceive a grant more clearly expressed than that in the present case; and unless we are disposed to reverse the previous decisions of this court, we cannot hesitate what judgment we ought to give."

See, also,

President and Faculty of St. Vincent's College v. *Schaefer*, 104 Mo., 261, cited at length *supra*.

3. If the meaning is given to the words "said seminary," and "belonging to," in the exemption provision, which the State Supreme Court found it necessary to give to them to reach the conclusion it did, the result is that the provision, as a whole, is given an unreasonable, and, in fact, absurd meaning.

In the opinion in 174 Ill., the State Supreme Court states its conclusion as to the meaning of the words, the meaning of which is in dispute,—"said seminary," and "belonging to," —as follows:

"The second section of the charter mentioning *certain property* to be located in or near the City of Chicago and which is denominated 'the seminary,' we think the words in the fifth section 'said seminary' refer to *that particular property*. * * * It is said that the only entity mentioned in the charter capable of *owning* property is the corporation, and, therefore, it could not have been intended that property belonging to or appertaining to the seminary was meant by section 5. We think this position is based upon *a too limited meaning* of the words 'belonging' or 'appertaining' as here used. * * * It is undoubtedly true that the word 'belong' *may* mean *ownership*, and *very often does*, but that is not its *only* meaning. Webster's International Dictionary defines it: '2. That which is *connected with* a *principal* or *greater* thing; an *appendage;* an *appurtenance*'."

It will be seen from this quotation that, under the construction which the state court has given to the exemption provision in its opinion in 174 Ill., (expressly followed and reaffirmed as the sole basis of its decision in both the cases now before this Court) the words "said seminary" are given the meaning "the *particular property*" which (as is assumed) was "mentioned" in the preceding section 2 as "the seminary" (the school buildings and grounds), and the word "belong" is given the meaning (using the language of the definition quoted and adopted in the opinion) "*connected with* a *principal* or *greater* thing; an *appendage*; an *appurtenance.*"

Substituting for the words actually used in section 5—"said seminary" and "belonging to"—the words which the Supreme Court of Illinois thus holds express the meaning

it was intended they should have—section 5 would read as follows:

"That the property of whatever kind or description *connected with*, as an *appendage* or *appurtenance*—or appertaining *to*—said seminary (meaning by 'said seminary' the particular *property* mentioned in the second section as 'the seminary') shall be forever free and exempt from all taxes for all purposes whatsoever."

Thus, reading the provision as the Supreme Court of Illinois say it was intended to be read, *only* the particular property "*connected with* the *principal* or *greater* thing"—as "an appendage or appurtenance" or "appurtenant *to*" —"the particular property" would be exempt.

The "*principal* or *greater* thing," "the particular *property*" referred to as "the seminary"—the school buildings and grounds,—"with" which the property exempted is defined as "connected" as "an appendage or an "appurtenance," would not be exempt, but, on the contrary, would be excluded from the exemption by the very language of the provision.

The result therefore of the construction given to the language of the provision by the State Court in 174 Ill. is, that the very property which the State has treated as exempt would not be within the provision, but would be taxable.

What then would be exempt? It is plain that other *real estate* would not be "connected with" "the particular property" known as the seminary—the school buildings and grounds—as "an appendage" or "an appurtenance."

Accordingly the State, acting on this decision, has taxed all the real estate *other than* the school buildings and grounds, and the taxes thus levied are the very taxes which the State Supreme Court has sustained as not within the exemption provision. (No. 140, Pr. Rec., 26; No. 265, Pr. Rec., 20.)

It follows that, if, giving the language of the exemption provision *the meaning given it by the State Supreme Court*, it did not exempt the school buildings and grounds, nor (as the state court has expressly held) the *real estate* other than the school buildings and grounds, the only property which it was intended to exempt was *personal* property.

Why then the language, "the property of *whatever* kind or description" etc., "shall be forever exempt," etc, if only *personal* property was intended?

Again, is *personal* property ever "an appendage" or "an appurtenance" to *real* estate?

But in any view, for the same reason that the State Court has held all the real estate other than the school buildings and grounds not within the exemption and therefore taxable, all *personal* property such as stocks, bonds, etc., held and used for the same purposes, would be taxable. The only property, therefore, which could by any possibility be within the exemption—giving its language the meaning given it by the State Supreme Court—would be *the furniture and apparatus in* the school buildings.

Again we say, can this *personal* property—furniture and apparatus—be said to be "an appurtenance" or "*appurtenant* to" the *real estate* known as "the seminary"—the school buildings and grounds—in the only sense in which that term is used as applied to property?

But aside from this, is it conceivable that the legislature used the broad and comprehensive language which was used in this provision, to express any such narrow and inconsequential exemption?

Can it be claimed that any such mere pretence of an exemption was present in the minds of the legislature when it used this language?

It is familiar law that in giving construction to a statute an absurd or unreasonable meaning will not be attributed to the legislature if the language admits of any other construction.

Lau Ow Bew v. *United States*, 144 U. S. 47, 59.
People ex rel. v. *Gaulter*, 149 Ill. 39.

4. The decision of the State Supreme Court, in both cases, is based on a construction of its previous decision in 174 Ill., which gives to the exemption provision a meaning wholly different from that given it by the same court in its opinion in 174 Ill., and one which it is impossible to derive from the words of the provision.

It is interesting to follow the process of evolution through which the provision in question has passed in the three different decisions of the Supreme Court of Illinois, and to compare the provision in the form finally given it by that court's construction with the provision as adopted by the legislature.

Section 5, as adopted by the legislature, reads:

"Sec. 5. That the property of whatever kind or description, *belonging or appertaining to said seminary* shall be forever free and exempt from all taxation for all purposes whatsoever."

Giving the section the construction given it by the Supreme Court of Illinois in 174 Ill., by substituting for the words "belonging to" and "said seminary" the words which the court held expressed the meaning intended, the section reads as follows:

"Sec. 5. That the property of whatever kind or description *connected with as an appendage or appurtenance or* appurtenant *to* said seminary (meaning by 'said seminary' *the particular property mentioned in section* 2 as 'the seminary'), shall be forever free and exempt from all taxes for all purposes whatsoever."

We have already shown that, giving the provision this

construction, it would not only make the precise property which the state *has not taxed* taxable (the school buildings and grounds), but in any view would render the provision so inconsequential and inconsistent as to be absurd, if not substantially meaningless.

When, therefore, in the two subsequent cases (the cases before the court), the state court, in applying its previous decision in 174 Ill., came to define its construction in a form which would include in the exemption the property which had not been taxed, and exclude the property which had been, an entirely new and different provision, wholly inconsistent with its actual decision in 174 Ill., was evolved.

In No. 140 the court, referring to 174 Ill., 177, say (No. 140, Pr. Rec., 54):

"In the latter case (174 Ill.) we held that Sec. 5 of the act of 1855 incorporating the appellant * * * refers only to *property used in immediate connection with the seminary, and does not include other property* which may be owned, rented or held by the said seminary as an investment, *even though the income thereof is used solely for school purposes.* We are satisfied with the conclusions reached in *People* v. *Theological Seminary, supra.*"

In No. 265 the court again repeated this construction of the decision in 174 Ill. Referring to that case and the subsequent case, No. 140, which followed it, the court say (No. 265, Pr. Rec., 31):

"In those cases we held that the provision in appellant's charter * * * refers only to *property used in immediate connection with the seminary, and does not include* other property which may be owned, held or rented by the corporation as an investment, *even though the income derived therefrom is used for the support of appellant's school.*"

Substituting for the words actually used in section 5 the words which the court says in these cases expresses the

meaning intended, as the result of its *construction of* the opinion in 174 Ill., 177, section 5 would read as follows:

"Sec. 5. That the property of whatever kind or description *used in immediate connection with* said seminary (meaning by 'said seminary' *the particular property mentioned in section* 2 as 'the seminary'), *and no other property*, shall be forever free and exempt from all taxation for all purposes whatsoever."

It will be seen that, as the result of this process of construction, we have in the two cases before the court an entirely *new* provision which it is impossible by any distortion of language to derive from the original section 5, and which is wholly inconsistent with the meaning which the court in its opinion in 174 Ill. gave to the language of the provision.

This is forcibly illustrated by the fact that, under the construction given in the opinions in the two cases before the court, quoted *supra*, the words "belonging or appertaining to" in the provision in question are given the meaning "*used in immediate connection with*," a meaning which they do not have either in the definitions adopted in 174 Ill., or in any definition given by any lexicographer.

5. The construction of the State Supreme Court is based wholly on the erroneous view that, instead of construing the provision of exemption in a fair and liberal sense, so as to promote the charitable object for which the corporation was formed, it should be construed narrowly by applying the rules of strict construction, and that the express provision of the charter that "this act shall be construed liberally in all courts," should be given a construction contrary to its plain intention, which would in fact render it wholly meaningless.

The entire reasoning of the opinion of the state court (174 Ill., 177) rests on the erroneous assumption that, in giving a construction to the provision, the rule of

strict construction should be applied, for the reason that it is a provision for exemption from taxation, and that *as a consequence* if the words "seminary" and "belonging" are capable of" two meanings, "one broad and the other restricted," the latter "*must* be" adopted.

We deny both the premise and the conclusion.

In the first place we say the rule of strict construction does not apply, as assumed, for two reasons:

First. The reasons of the rule of strict construction which apply to exemption provisions in favor of private corporations for pecuniary profit do not apply, and for that reason the rule itself does not apply, to exemptions in favor of charitable corporations, but the true rule as to such exemptions is that they should be construed liberally to promote the charitable objects for which the corporation was formed.

Second. Section 6 of the charter of plaintiff in error expressly provides that, "This Act * * * shall be construed liberally in all courts," and for that reason the rule of strict construction has no application.

(1) It was held in the following well-considered cases that, as the *reasons* of the rule of strict construction, as applied to exemptions from taxation in favor of corporations *for pecuniary profit*, do not exist as to exemptions in favor of charitable corporations, the rule of strict construction does not apply to exemptions in favor of such institutions, but that such exemptions should be construed liberally, to promote the charitable object for which the corporation was created.

Yale University v. *New Haven*, 71 Conn., 316.

Phillips Academy v. *Andover*, 175 Mass., 118.

Association for Colored Orphans v. *Mayor*, 104 N. Y., 581.
People v. *Sayles*, 50 N. Y. Supp., 8.
Long Branch Firemen's Relief Ass'n v. *Johnson*, 62 N. J. L., 625.
Sisters of Charity v. *Township of Chatham*, 52 N. J. L., 373.
State v. *Fisk University*, 87 Tenn., 233.
M. E. Church v. *Hinton*, 92 Tenn., 88.

The reasons of the distinction are well stated in *Yale University* v. *New Haven*, 71 Conn., 316. In that case the court, in holding that the buildings of Yale University which were occupied *exclusively as dormitories and dining halls by its students*, were within a statutory exemption from taxation, say (pp. 328–330, 333, 335, 338):

"The defendant further claims that * * * Sec. 3820 must be construed strictly, *because it is a statute exempting property from taxation.* * * * The rule that laws exempting property from taxation should be strictly construed, is well-settled and is based on solid reason. * * * The rule is limited by the reasons which brought it about. These are two: exceptions to a general rule should be distinctly stated; *private* privileges are obnoxious to the law and must be clearly expressed. The rule in truth is based on a presumption of intention; the legislature ordinarily intends its laws to apply to all equally; it does not intend to grant privileges to select individuals. * * * These reasons do not fully apply to the law under discussion. The non-taxation of public buildings is not the exception but the rule. The corporations whether municipal or private, which own and are by law charged with the maintenance of such untaxed buildings, *are not the recipients of special privileges, in any sense obnoxious to the law.* This clause of section 3820 does not exempt any *individuals* from the burden of taxation *that is common to all;* it does not grant to *one*, particular privileges denied to all others; it

declares that lands and buildings *sequestered to certain public uses, i. e., taken out of the body of private property and devoted exclusively to the common good, from which no individual can derive any profit,* are not taxable property. * * *

This clause of Sec. 3820 is not strictly so much an exemption from taxation, as *the declaration of a public policy well-settled and long established; it must therefore be construed reasonably so as to give full effect to the policy declared, as well as to avoid abuse and frustrate evasion.* * * *

Some of the considerations suggested in discussing the clause of Sec. 3820, apply to the construction of this charter. In granting such a charter the state *constitutes the corporation its agent, for a purely public purpose,* and intrusts it with authority, which can only be derived from the state, to confer degrees in scholarship and learning upon those found worthy. The legislative intent is indicated in the charter of Wesleyan College, which provides that the act *'shall be liberally construed, for every beneficial purpose hereby intended.'* 1 Private Laws, 472. * * *

This statute was intended to serve a great public use in pursuance of a most beneficial public policy, and the construction to be given such a statute requires that the intent shall not be defeated either by clear evasion or undue restriction."

In *Phillips Academy* v. *Andover*, 175 Mass., 118, the court, in giving construction to a provision of the charter of the Academy exempting its property from taxation, and holding that the particular property was within the exemption, say (p. 125):

"The statute is not to be construed *narrowly*, but *in a fair and liberal sense, and so as to promote that spirit of learning, charity and benevolence which it has always been one of the fundamental objects of the people of this state to encourage."*

In *Association for Colored Orphans* v. *Mayor*, 104 N. Y., 581, the court (PECKHAM, J.,) in holding certain property of the plaintiff, an incorporated charitable association, within a statutory exemption from taxation say (p. 587):

"The general principle that statutes of exemption should be strictly construed, we believe in and adhere to, but *such a case as this we do not regard as coming within that principle.* * * *

Such a case as this is wholly outside of the mischief intended to be prevented by the rule referred to. When *business corporations or interests* come to the courts seeking an exemption from the common burden of taxation, it behooves them to show plainly the law which grants the exemption claimed, and the courts will scrutinize it with great care and caution before allowing such claim."

In *People* v. *Sayles*, 50 N. Y. Supp., 8, the court, in holding that certain property was used "exclusively" for carrying on the purposes of the corporation—an educational institution—within the meaning of a statutory exemption, say (p. 11–12):

"The *policy* of the exemption is the moral and mental improvement of men or women, the formation and maintenance of religious, benevolent, educational, patriotic, scientific, literary, historical and burial associations, *all of which are aids to and accompaniments of a refined and advanced civilization.* This *policy* is not subverted, but, on the contrary, is promoted by permitting the relator to devote a portion of its premises to a profitable use, when they are not needed and cannot be used by its own members. * * *

In reaching this conclusion, I am not unmindful that taxation is the rule, and exemption the exception, and that an intent to exempt property from taxation is not to be presumed; *but the true rule is that statutes such as this should be construed, not narrowly by the letter, but liberally and broadly, in view of their object and spirit.*"

In *Long Branch Firemen's Relief Ass'n* v. *Johnson*, 62 N. J. L., 625, the court, referring to a provision of a statute exempting property of a firemen's relief association from taxation, say (p. 627):

"These acts concerning exemptions of this class are *liberally construed.*"

Citing,

Sisters of Charity of St. Elizabeth v. *Township of Chatham*, 52 N. J. Law, 373.

In *Sisters of Charity* v. *Township of Chatham*, 52 N. J. L., 373, the court, referring to a provision of the New Jersey statute, exempting from taxation, "all buildings used exclusively for charitable purposes," say (p. 376):

"This section of the statute relating to taxation should be construed, *not narrowly by its letter, but liberally and in view of its object and spirit.* This was the method applied in the case of *State* v. *Ross, Collector of Princeton*, 4 Zab., 497.

In *State* v. *Fisk University*, 87 Tenn., 233, the court, in holding certain property of the University exempt from taxation under a statutory provision for the exemption of property "held and used for purposes purely religious, charitable, scientific, literary or educational," say (pp. 238–41):

"It is unnecessary to resort to argumentation or to cite authorities for the general principle that exemptions from taxation are *generally* to be construed with great strictness. * * * *But this, like all other rules of construction, is made to rest upon the intention of the legislature.*

To apply this strict construction to individuals and to corporations *for profit* is but to announce the judgment of the courts upon the intention of the Legislature, while to give to a constitutional or legislative act granting an exemption *in aid of institutions literary and educational*, a construction that is within the spirit, policy, and purpose of the act and not opposed to its letter, is likewise *but ascertainiag and declaring the intent of the law-making power.* * * *

We only decide that the intention of the legislature must govern in ascertaining the extent of such exemptions, and that in arriving at such intention *the same strictnessof construction will not be indulged where the exemption is is to religious, scientific, literary and educational institutions that will be applied in considering exemptions to corpora-*

tions created and operating for private gain or profit. In the latter character of cases entirely different considerations move the legislature, and the exemptions are intended to go no further than they have in terms provided."

See also, *M. E. Church* v. *Hinton*, 92 Tenn., 188, which follows and quotes with approval the above case.

(2) Whatever the rule in the absence of an express provision in the charter—whether the rule of strict construction applies to an exemption provision in the charter of a charitable corporation—the legislature of Illinois in granting this charter expressed its intention not to leave the question open, and therefore, made an express provision on the subject.

Section 6 of the charter is as follows:

"Sec. 6. This Act to take effect and be in force from and after its passage, and *it* shall be deemed a public act, and *shall be construed liberally in all courts* for the purpose therein expressed."

Similar statutory provisions, either abolishing the rule of strict construction as to all statutes, or providing that it shall not apply to particular statutes, are not uncommon.

In Kentucky and California the rule of strict construction has been abolished as to all statutes, and by express statutory provision the same rules of construction apply to statutes to which the rule of strict construction would apply at common law, such as criminal and penal statutes, as to all other statutes.

Commonwealth v. *Davis*, 12 Bush (Ky.), 240.
People v. *Soto*, 49 Cal., 67.

So, in Illinois it is held that the general statutory provision as to the construction of statutes, that "all *general* provisions, terms, phrases and expressions, shall be *liberally construed*, in order that the true intent and meaning of

the legislature may be fully carried out," applies to *all* statutes, and should therefore be applied in giving construction to a criminal or penal statute.

Hankins v. *People*, 106 Ill., 628.
Maxwell v. *People*, 158 Ill., 248.
Peterson v. *Currier*, 62 Ill. App., 163.

In *Brown University* v. *Granger*, 19 R. I., 704, the charter of Brown University provided, among other things (p. 706), that, "*the college estate*" should be "exempted from all taxes."

It also provided that:

"This charter of incorporation and every part thereof * * * *shall be construed, reputed and adjudged in all cases most favorably* on the behalf and for the best benefit and behoof of the said Trustees and Fellows and their successors *so as most effectually to answer the valuable ends of this useful institution.*"

The court, in holding that certain lands which the university had received by endowment, but which were no part of the college buildings and grounds, were "*college* estate" within the meaning of the exemption provision, say (p. 707):

"The General Assembly evidently contemplated that the college would be endowed, and in order that it might be, and that it might be enfranchised, with the same privileges and immunities enjoyed by the American colleges and European universities, they ordained that the *college estate* should be freed and exempted from all taxes. *Nor did they stop here;* but, lest their desire to specially favor this valuable institution of learning should be misunderstood, they declared that 'the charter and every part thereof shall be good and available in all things in Law, according to our true intent and meaning, and *shall be construed, reputed and adjudged in all cases most favorably* on the behalf and for the best benefit and behoof of the said Trustees and Fel-

lows and their successors so as most effectually to answer the valuable ends of this useful Institution.'

It is difficult to see how the intention of the General Assembly to exempt *all* of the property *which might be owned by the plaintiff* from taxation could have been *more clearly and emphatically expressed.*"

It will be seen that the provision of section 6 applies to "*this Act,*" and therefore to every provision of it.

It will also be seen that the effect of this provision requiring a liberal construction to be given to the act, including the exemption provision, "in all courts," is to destroy the entire fabric of the reasoning of the State Supreme Court, which, as we have seen, is built up wholly on the rules of strict construction.

The State Court, to avoid this, in effect construes away the provision.

The Court after quoting the provision say (p. 181):

"We do not think this language was intended to or could be held to change or qualify *the general rules of construction* applicable to the section under consideration. Here the very question to be determined is, what is the *purpose* expressed in that section? And to say that liberal rules of construction must, under section 6, be applied in favor of the contention that all property belonging or appertaining to the corporation is exempt, would be to beg the whole question. In determining what *purpose* is expressed in the section resort must necessarily be had to the *general rules for considering such laws.* When that *purpose* is ascertained, liberal rules of construction, *if necessary,* are to be resorted to *to give effect to* such purpose."

This reasoning, which, it will be seen, applies equally to every section of the charter, would wholly nullify the provision.

It will be observed that the court treats the lan-

guage, "the purpose therein expressed," as referring to the *intention* of *each* provision. If the *intention* of each provision is to be *first* ascertained, and that by the rule of strict construction, before section 6 applies, the express provision that "This Act * * * shall be *construed liberally in all courts* for the purpose therein expressed," would be meaningless.

Take the provision in question. If the rule of strict construction is to be applied in construing it in order to ascertain its *intention,* for what purpose can it be construed "liberally in all courts"?

If section 6 only applies *after* each provision has been construed, and "the purpose," *i. e.,* the intention, has been ascertained by construction, what is there remaining to construe?

If the intention of each provision is to be ascertained by construing it before the provision of section 6 applies, what does section 6 refer to?

The provision that "This Act * * * *shall be construed liberally in all courts*" was clearly intended to have a meaning and should be given some effect.

There is no room for applying rules of construction except in ascertaining the *intention* of the different provisions, and when the *intention* is ascertained, there is no further occasion for construction.

The "purpose therein (in the Act) expressed" was to incorporate the Chicago Theological Seminary, with the object, as declared in Sec. 2, "to furnish instruction and the means of education to young men preparing for the gospel ministry."

It was to give effect to this purpose that "the Act," was to be "construed liberally in all courts."

The construction of the State Supreme Court that the word "purpose" in section 6 refers to the *intention* of each provision, and that, before the rule of liberal construction can be applied, this *intention* must be first ascertained, as to each provision, by applying the ordinary rules of construction, *including the rule of strict construction*, would render the provision wholly meaningless.

6. The decision of the State Supreme Court is not only based on the erroneous view that the rules of strict construction apply, but on the wholly erroneous assumption, that under these rules "if the language (of a provision) is capable of a broader, or more restricted meaning, the latter must be adopted." Such is not the effect of the rules of strict construction, even on the assumption that they apply, but on the contrary, the words used, if "capable of" two meanings, should be given their primary and ordinary meaning in the absence of other language showing that a different meaning was intended, and such meaning as will best express the legislative intention.

The State Court, in its opinion, after stating the rule of strict construction which it holds should be applied in giving construction to the provision, say (174 Ill., 181):

"*In other words*, if the language is *capable* of a broad or more restricted meaning the latter *must* be adopted."

Assuming that the rule of strict construction applies (which we deny for reasons stated *infra*), it will be seen that the court here holds that, under the rule of strict construction, if the language used in the provision is "*capable* of" two meanings, the one "a broad" and the other "a more restricted" meaning, "the latter,"—the "more restricted"—"MUST be adopted."

Starting with this assumption as to the *effect* of the rule of strict construction (which we shall show is clearly erroneous), as the basis of its reasoning, the court finds that the two words "seminary" and "belonging," being "capable

of" two meanings, the "more restricted" meaning "*must* be adopted."

It only looks to the particular words to find that they are "capable of" two meanings, and because it finds they are, adopts the "more restricted" in obedience to the supposed rule of strict construction that, "if the language is *capable* of a broad *or* more restricted meaning *the latter must* be adopted."

Thus, in construing the words "belonging to," the court say that "belong" "*may* mean *ownership* and *very often* does, but that that is not its *only* meaning."

Having reached this conclusion, wholly irrespective of the fact, as we have seen, that ownership is the primary and natural meaning of the word, and of all other rules of construction, the court, in obedience to the supposed rule that where a word is "capable of" two meanings the more restricted "*must* be adopted," adopts this meaning.

So as to the word "seminary." The court, assuming that the word has the meaning of "certain *property*"—the school buildings—in section 2, although it manifestly has a different meaning in the title and in section 4—the incorporated institution—concludes, without assigning any other reason, that it should therefore be given the same meaning in section 5.

It will be seen that this assumption as to the meaning of the rule of strict construction eliminates all consideration of the actual *intention* of the Legislature, or of the reasonableness of the particular meaning, and makes the mere fact that the word is "capable of" the two meanings, and that the one is "more restricted" than the other, conclusive of the question.

That the court's conclusion rests wholly on this errone-

ous assumption as to the meaning of the rule of strict construction—that if the word is "capable of" two meanings, "the one broader" and "the other more restricted," the latter "*must* be adopted"—is forcibly illustrated by the fact that although, as we have already shown, its construction attributes a manifestly unreasonable and in fact absurd meaning to the provision, nothing is said by the court as to this effect of the construction.

This assumption of the court as to the meaning of the rule of strict construction is wholly erroneous.

The authorities are uniform that the rule of strict construction where it applies does not in any way change or override the other general rules of construction.

The question where the rule of strict construction applies, as where it does not, is, What was the *intention* of the language used? If the language used admits "of two meanings" the question still is, which of the two meanings was it the intention of the law maker that it should have?

The rule of strict construction does not require that either one or the other of these two meanings "must be "adopted, or in any way change or override the familiar and well settled rule that, where a word admits of two meanings, the natural and ordinary meaning should be adopted in the absence of other provisions showing a contrary *intention*.

In Endlich on the Interpretation of Statutes, Sec. 337, the author says (p. 466):

The paramount object in construing penal as well as other statutes, is to ascertain the legislative intent; and the rule of strict construction is not violated by permitting the words to have their full meaning, *or the more extensive of two meanings, when best effectuating the intention.* They are indeed *frequently* taken * * * *in the widest sense,* sometimes even in a sense *more wide than*

etymologically belongs or is *popularly* attached to them, *in order to carry out effectually the legislative intent.*"

In *U. S.* v. *Winn*, 3 Sumn., 209, (quoted with approval in Black on Interpretation of Statutes, p. 290) the court (*Story*, J.) referring to the rule of strict construction as applied to penal statutes, says (p. 211):

"Where the words are general and include various classes of persons, I know of no authority which would justify the court in restricting them to one class, or *in giving them the narrowest interpretation*, where the mischief to be redressed by the statute is equally applicable to all of them. And where a word is used in a statute which has *various known significations*, I know of no rule that requires the court to adopt one in preference to another *simply because it is more restrained, if the objects of the statute equally apply to the largest and broadest sense of the word.*"

In *U. S.* v. *Hartwell*, 6 Wall., 385, the court (Swayne, J.) uses the following language (quoted with approval in 23 Am. & E. Enc. L., p. 378) in referring to the rule of strict construction (p. 395):

"We are not unmindful that penal laws are to be construed strictly. * * * The object in construing penal, as well as other statutes, is to ascertain the *legislative intent.* That constitutes the law. * * * *It must not be defeated by a* FORCED *and* OVERSTRICT *construction. The rule does not exclude the application of common sense to the terms made use of in the act, in order to avoid an absurdity which the legislature ought not to be presumed to have intended.* * * * The proper course in all cases is to adopt that sense of the words which *best harmonizes with the context and promotes, in the fullest manner, the policy and objects of the legislature.* The rule of strict construction *is not violated* by permitting the words of the statute to have their full meaning, *or the more extended of two meanings*, as the wider popular instead of the more narrow technical one."

In *Meadowcroft* v. *People*, 163 Ill., 56, the Supreme Court

of Illinois, in giving construction to a penal statute, say (p. 70):

"It is urged that the statute is penal, and must therefore be strictly construed. But the rule of strict construction does not prevent our calling in the aid of other rules and giving to each its appropriate scope, *the ascertainment of the legislative will being the primary consideration, after all.* (Bishop on Stat. Crimes, Sec. 200.) *A strict construction is not violated by giving the words of a statute a reasonable meaning, according to the sense in which they were intended, and disregarding captious objections, and even the demands of an exact grammatical propriety.* (*Idem*, Sec. 212.)"

7. The construction of plaintiff in error does not "extend the meaning of the words used, by implication," as erroneously held by the State Supreme Court.

The State Court say (174 Ill., at p. 182):

"To say, as is contended by appellee, that 'said seminary' was intended to mean the corporation, is to extend the meaning of the words *by implication*, which is not permissible."

As we have already pointed out, to give the words "said seminary" the meaning for which we contend is, in any view, only to give to "seminary" the meaning it has in the title of the act, and also in the preceding sections 1 and 4. It is not, therefore, "to extend the meaning of these words by implication" or otherwise.

This is illustrated by the many provisions in different charters passed by the same legislature in which the words, "said seminary," "said academy" or "said college," referred to *infra*, are unmistakably used as referring to the incorporated institution—the corporate entity—as distinguished from the mere buildings occupied by the institution. (See Appendix, pp. 5-13.)

8. The construction of plaintiff in error is further decisively confirmed by a consideration of other similar charters containing provisions for exemption from taxation passed at the same and other sessions.

By the constitution of 1848 unlimited power was given the legislature to promote the establishment of educational and other charitable institutions by grants of special charters and of exemptions from taxation.

During the period which followed the adoption of this constitution—until the adoption of the constitution of 1870, which limited the power of the legislature over the subject—the legislature of Illinois, in pursuance of the policy manifested by the constitution, at each session granted to different educational institutions special charters containing exemptions from taxation.

We have printed, and file with this brief as an Appendix, the material provisions of many of these charters, as forcibly and in fact decisively confirming our construction of the exemption provision in question.

In *Vane* v. *Newcombe,* 132 U. S., 220, this court, at 235, quote with approval the following language of the court in *Stout* v. *Board of Commissioners,* 107 Ind., 343-348:

"In cases of doubt or uncertainty acts *in pari materia,* passed either before or after, and whether repealed or still in force, may be referred to in order to discern the intent of the legislature *in the use of particular terms* or in the enactment of *particular* provisions and, within the reason of the same rule, contemporaneous legislation not precisely *in pari materia* may be referred to for the same purpose."

In 23 Am. & Eng. Ency. of Law, under the title "Statutes," (p. 311), it is said:

"Statutes which are not inconsistent with one another and which relate to the same subject-matter are *in pari materia,* and should be construed together and effect be

given to them all, although they contain no reference to one another and were passed at different times. Especially should effect be given, if possible, to statutes *in pari materia* enacted at the same legislative session. So contemporaneous legislation, not precisely *in pari materia* with the statute to be construed, may be referred to on the question of intent.

Not only may contemporaneous and prior statutes be considered in construing a given act, but a subsequent statute may often aid in the interpretation of a prior one. Private acts conferring special privileges and the general acts on the same subject are also to be construed together and effect is to be given to both, if possible.

In construing a given act the meaning of words or terms as used therein may be gathered from the consideration of other acts *in pari materia* in which such words or terms were also used."

See, also,

Chase v. *Lord*, 77 N. Y., 1, at 18–19.
Middleton v. *Greeson*, 106 Ind., 18, at 24.
Levering v. *Philadelphia, Germantown & Norristown R. R. Co.*, 8 Watts & S., 459, at 463.
Reiche v. *Smythe*, 13 Wall., 162.

We contend that a reference to these different charter provisions decisively confirms our construction of the provision in question.

(1) On reference to the different charters passed by the same legislature, containing provisions for exemption from taxation, it will be seen that there are many passed at different sessions which provide for a *partial* exemption from taxation identical (or substantially so) with the exemption the State Court holds was *intended* by the provision in question, but in which specific language was used clearly defining the particular property intended to be exempted. (See Appendix, pp. 1-5.)

Thus, at the same session, that of 1853, at which, in the act incorporating the Galena Theological Seminary, it granted to that institution an exemption from taxation *in the identical language* of the exemption in question (Appendix, p. 5), the legislature, to express the *partial* exemption which it granted to the Oregon Union Institute by its charter (Appendix, p. 3), made the following provision:

"Sec. 16. *The tract of land on which the buildings of the institute may be erected, together with all the furniture, books and apparatus belonging to said institute,* shall be exempt from all taxes."

So, at the same session at which it passed the act incorporating plaintiff in error, that of 1855, for the purpose of expressing a *partial* exemption, granted to the German School Association of Muscoutah substantially the same as the State Court holds was *intended* by the provision in the charter of plaintiff in error, it provided (Appendix, p. 3):

"Sec. 9. *The school house of the Association and the fixtures in the same, the books and library of the Association and the lot of ground on which their school house is or may be erected, shall be exempt from all taxes."*

See, also, and compare the exemption provision in the charter of the Carbondale College, passed at the session of 1857 (Appendix, p. 8), *in the identical language of the provision in question,* with the *partial* exemption provisions in the charters of the McHenry Institute (Appendix, p. 3) and Almira College (Appendix, p. 4), passed at the session of 1857.

These provisions show that when the Legislature of Illinois made a *partial* exemption, such as the State Court has held was intended by the provision in question, it knew how to use, and was acustomed to use, the specific language appropriate to express that intention. They also show that the

nature of the different partial exemptions was a matter of consideration, and that carefully and definitely expressed provisions were inserted when such *partial* exemption was intended.

Why, if any such partial exemption as the State Supreme Court has found was intended, did the legislature use such broad language, so wholly inappropriate, instead of the phrases which it had used in so many other charters and which would have been appropriate and natural to express that intention?

The holding of the State Court comes to this, that the Legislature of Illinois had determined to make a *partial* exemption in the particular case instead of the full exemption given the Galena Theological Seminary, and that for this purpose, instead of using the specific language used in other charters to define such *partial* exemption, it used the *same language* which it used in the Galena Seminary charter to express a *total* exemption.

It is claimed, however, that the intention was that because the words "the seminary shall be located," etc., were inserted in the previous section 2, the language of the exemption provision, which would otherwise express a *total* exemption, should only mean the narrow and limited *partial* exemption it expressed by specific language in other charters passed at the same and previous sessions.

Or, to put it another way, the claim is that the legislature in inserting in section 2 the words "the seminary shall be located," etc., not only intended to provide as to the location of the institution but to change the *total* exemption, which would otherwise be expressed in the broad language of Section 5, to the particular partial exemption which the State Court has held was intended.

(2) We find the same provision for exemption from taxation, *in the identical language*, with the same title to the Act, a like corporate name, etc., as in the charter of plaintiff in error, in different charters incorporating similar educational institutions, passed by the Legislature of Illinois *at the same and other sessions*, both before and after, in which there was no section like section 2, or other provision on which to base the reasoning which is the sole ground of the conclusion of the Supreme Court of Illinois. (See Appendix, pp. 5-13.)

Not only this, but in many of these different charters we find such references to the word "seminary" in other provisions as conclusively shows that the corporate entity was intended to be described by it. (See Appendix, pp. 6, 8, 12.)

As we have already shown, the intention to create, by the broad and general language of the provision in question, a partial and limited exemption, only covering the property *"used in immediate connection with"* the school buildings, as distinguished from a *total* exemption, is found by the State Supreme Court in the fact alone that in the *previous section* (Sec. 2) the word "seminary" is used, as the court assumes, as referring to "certain *property*," the school buildings, etc.

If there was no section 2, or if the words "the seminary" had not been used in that section, the entire basis of the reasoning of the State Court would be gone. There would then be no room for question that the words "*said* seminary" in the exemption provision referred to the institution incorporated by the Act and mentioned in the title and the previous section 4.

On reference to several of these other special charters passed by the same legislature (two at the *same session*), in

which there was provision for exemption from taxation *in the identical language* of the provision in the charter of plaintiff in error, it will be seen that there was no previous section like section 2, on which a like argument, that the word "seminary" was used as referring to "particular property," could be based.

Thus, in the charter of Galena Theological Seminary (Appendix, p. 5), passed at the next preceding session of the legislature, in 1853 (in which there was the same exemption provision, and other provisions in the same language, indicating that the charter of plaintiff in error was drafted from it), there was no like provision or previous use of the word "seminary" in connection with the word "located," giving ground for the argument that certain property was referred to. On the othe hand, the word "located" is found as in section 1, in a connection which shows that it clearly refers to the incorporated institution. In this charter the words "said seminary" in the exemption provision could refer only to the incorporated institution; there is no room for construing this general provision of exemption as a partial exemption.

So in the charter of the Duquoin Seminary, passed at the same session as the charter of plaintiff in error, the exemption provision (section 8) is in the identical language of the provision in question—"all property of whatever kind and description *belonging or appertaining to said Seminary.*" (Appendix, pp. 6, 7.)

On the other hand, there is no previous mention of "the seminary" in a connection which even admits of the construction that "particular *property*" (the school buildings) was intended. On the contrary, there is the same use of

the word "seminary" in the title, "An Act *to incorporate* the Duquoin Female Seminary," followed by the words "said seminary," in section 5, preceding the exemption provision, in such a connection that they could only refer to the incorporated institution—"The board of directors shall faithfully apply *all funds* collected or hereafter to be collected *for said* seminary."

See also, as still more forcibly illustrating this, the charters of the Carbondale College, passed in 1857 (Appendix, p. 8), and of the Lake Forest University, passed in 1865 and amended in 1869 (Appendix, p. 12).

Did the *same language* in these charters mean a total exemption, and in the particular charter of plaintiff in error mean only the partial and narrow exemption claimed?

Will it be held that the Galena Theological Seminary, Carbondale College, the Lake Forest University, etc., are entitled to a *total* exemption—as they clearly are—and that it was the intention of the *same* provision in the charter of plaintiff in error to only give to plaintiff in error the narrow, partial exemption claimed, solely because this particular section 2 was inserted?

(3) In a number of the special charters, passed at different sessions, the same word "located" (on which, as we have seen, the State Court bases its conclusion that "the seminary" in section 2 referred to the school buildings) is used in the *first* section in a connection which necessarily refers to the institution incorporated by the Act instead of the school buildings. (Appendix, pp. 13-15.)

The only difference in the charter in question is that the provision as to the *location* is put in a separate section in connection with *the object*. But the word "located" was manifestly used in the same sense as in the other charters.

This is illustrated by a comparison of the charter of the Galena Theological Seminary, passed in 1853 (from which the charter of the Chicago Theological Seminary was evidently taken), with the charter of plaintiff in error, passed in 1855. On comparison of these two charters it will be seen that the charter of the Chicago Theological Seminary follows that of the Galena Theological Seminary almost literally, with a few slight changes of form, one of which consists in putting the *location* in the second section with *the object,* instead of leaving it in the first section. (Appendix, p. 5.)

For other charters in which the word "located" is used in the same sense, as referring to the corporation, as in the charter of the Galena Theological Seminary, see Appendix, pp. 13-15.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1902.

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Clerk

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Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, ex relatione SAMUEL B. RAYMOND, County Treasurer and ex officio County Collector of Cook County, Illinois,
Defendant in Error.

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Defendant in Error.

No. 265.

APPENDIX TO BRIEF FOR PLAINTIFF IN ERROR.

Provisions in different Special Charters passed by the Legislature of Illinois referred to in Brief for Plaintiff in Error.

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APPENDIX TO BRIEF FOR PLAINTIFF IN ERROR.

In this appendix we have printed in full the material provisions of the different charters passed by the Legislature of Illinois, which contain exemptions from taxation, referred to in the brief for plaintiff in error, as follows:

1. Charters in which the legislature granted, by *specific* language defining the exemption, the same partial exemption which the Supreme Court of Illinois holds was intended by the *general* language of the exemption provision in the charter of plaintiff in error.

2. Charters containing exemption provisions identical in language with the provision in the charter of plaintiff in error, and the intention of which to exempt all the property of the incorporated institution, is indisputable.

3. Charters in which the word "located," etc., is used in a connection which indisputably shows that the incorporated institution was referred to.

I.

CHARTERS IN WHICH THE LEGISLATURE GRANTED, BY SPECIFIC LANGUAGE DEFINING THE EXEMPTION, THE SAME PARTIAL EXEMPTION WHICH THE SUPREME COURT OF ILLINOIS HOLDS WAS INTENDED BY THE GENERAL LANGUAGE OF THE EXEMPTION PROVISION IN THE CHARTER OF PLAINTIFF IN ERROR.

1847.

"An Act to incorporate the Illinois Conference Female Academy." (Private Laws of 1847, p. 52.) Made a public act.

"Sec. 5. * * * The lot of land *on which the buildings may be erected*, not exceeding five acres, *with the buildings and appurtenances thereof*, shall be exempt from taxation for state, county or corporation purposes."

1851.

"An Act to incorporate the Illinois Liberal Institute." (Private Laws of 1851, p. 246.) Made a public act.

"Sec. 16. The tract of land *on which the buildings of the institute may be erected, together with all furniture, books, and apparatus belonging to said institute,* shall be exempt from all taxes."

1853.

"An Act to incorporate the Oregon Union Institute." (Private Laws of 1853, p. 497.) Made a public act.

"Sec. 16. *The tract of land on which the buildings* of *the Institute may be erected, together with all the furniture, books and apparatus belonging to said institute,* shall be exempt from all taxes."

1855.

"An Act to incorporate the Illinois Military Institute." (Private Laws of 1855, p. 509.)

"Sec. 7. The *lot of land on which the building may be erected,* not exceeding in quantity twenty acres, *with the improvements thereon and all the personal property* of the corporation shall be exempt from taxation for any purpose whatever."

"An Act to incorporate the German School Association of Muscoutah." (Private Laws of 1855, p. 514.) Made a public act.

"Sec. 9. *The school house of the association and the fixtures in the same, the books and library of the association and the lot of ground on which their school house is or may be erected,* shall be exempt from all taxation."

1857.

"An Act to incorporate the McHenry Institute." (Private Laws of 1857, p. 1374.) Made a public act.

"Sec. 16. *The tract of land, not exceeding twenty acres, on which the buildings of the institute may be erected, together with all furniture, books and apparatus belonging to said institute,* shall be exempt from all taxes."

"An Act to incorporate the Almira College, Greenville, Bond County, Illinois." (Private Laws of 1857, p. 582.)

"Sec. 4. *The college buildings and the grounds connected therewith, and all the books, furniture, cabinets, apparatus, and all other things and means for affording instruction,* shall be forever exempted from state and county taxes."

1859.

"An Act to incorporate the Nashville Male and Female Seminary." (Private Laws of 1859, p. 370.)

"Sec. 11. *The block of lots or tract of land on which the buildings may be erected belonging to said institution,* not exceeding ten acres of land, *with the improvements thereon, and all personal property* belonging to said corporation, shall be exempt from taxation for any purpose whatever."

1865.

"An Act to incorporate the Grand Prairie Seminary and Commercial College." (Private Laws of 1865, Vol. 1, p. 23.) Made a public act.

"Sec. 9. The property, real and personal, of *said college* shall be exempt from any taxation or assessments, for state, county, township, road, city, or school purposes, *while owned and occupied by the college for college or school purposes.*"

1867.

"An Act to incorporate the Simpson Seminary and Collegiate Institute." (Private Laws of 1867, Vol. 1, p. 10.) Made a public act.

"Sec. 13. The property, both real and personal and mixed, *belonging to* this corporation at any time during its existence, *such as may be used and occupied for college purposes,* shall forever be and remain free from taxation.

1869.

"An Act to amend an act entitled 'An Act to incorporate the Virginia Seminary of the Cumberland Presbyterian Church,' approved June 14, 1852, and an act amendatory thereof, approved June 1, 1857." (Private Laws of 1869, Vol. 1, p. 49.) Made a public act.

"Sec. 9. *The lot of land on which the buildings stand,* not exceeding in quantity twenty acres, *with the improvements thereon, and all the personal property* of the corporation, shall be exempt from taxation for any purpose whatever."

II.

CHARTERS CONTAINING EXEMPTION PROVISIONS IDENTICAL IN LANGUAGE WITH THE PROVISION IN THE CHARTER OF PLAINTIFF IN ERROR AND THE INTENTION OF WHICH TO EXEMPT ALL THE PROPERTY OF THE INCORPORATED INSTITUTION IS INDISPUTABLE.

1853.

"An Act to incorporate the Galena Theological Seminary." (Private Laws of 1853, p. 274.) Made a public act.

"Sec. 1. That (the persons named) and their successors, are hereby constituted a body politic and corporate under the name and style of the 'Galena Theological Seminary,' *to be located at or near* the City of Galena, and by that name and style to remain, and shall shall have perpetual succession, with power to sue and be sued, etc.

Sec. 2. The government of *the seminary* shall at all times be vested in a *board of directors,* which shall consist of eighteen members, etc.

Sec. 3. * * * Each class of directors shall hereafter be chosen for and hold their office during the term of three years, with the exceptions specified in the constitution of *said Theological Seminary.* * * * that any

director may be eligible to a re-election, at the discretion of the appointing power, which appointing power is hereby forever vested in the presbyteries connected with that body or denomination of christians known as the Constitutional Presbyterian Church of the United States of America, and in the board of directors as provided in the constitution of *said Theological Seminary.*

Sec. 6. That all property of whatsoever kind and description *belonging or appertaining to said seminary* shall be and forever remain free and exempt from all taxation, for any and all purposes whatever.

Sec. 7. This act to take effect and be in force from and after its passage, and it shall be deemed as a public act, and *shall be construed liberally in all courts* for the purposes therein expressed."

1855.

"An Act to incorporate the Duquoin Female Seminary, in Perry County." (Private Laws of 1855, p. 370.) Made a public act.

"Sec. 1. That (the persons named) and their successors be and are hereby constituted a body politic and corporate under the name and style of 'Duquoin Female Seminary' to be *located in or near* the Village of Duquoin, in section No. twenty-seven, in township No. six south, of range No. one, west of the third principal meridian, County of Perry, and by that name and style to remain, and shall have perpetual succession * * * and be capable in law of taking and holding, by gift, grant and devise or otherwise, etc.

Sec. 2. The *government* of this *institution* shall at all times be vested in a board of directors, consisting of eighteen members. * * *

Sec. 5. The board of directors shall faithfully apply *all funds* collected or hereafter to be collected for *said seminary* according to their best judgment. * * *

Sec. 7. It shall be the duty of the board of directors to appoint one of their number treasurer who shall be required to give bond. * * * and all process against said corporation shall be by summons, and service of the

same shall be by leaving an attested copy with the *treasurer of said institution* at least thirty days before the return day thereof.

Sec. 8. All property of whatever kind and description *belonging or appertaining to said seminary* shall be and forever remain free and exempt from all taxation for any and all purposes whatever."

"An Act to incorporate the Marengo Collegiate Institute of the Presbytery of Chicago. (Private Laws of 1855, p. 503.) Made a public act.

"Sec. 1. That (the persons named) and their associates and their successors in office be and they are hereby constituted and created a body politic and corporate under the name and style of 'The Marengo Collegiate Institute of the Presbytery of Chicago' and by that name and style to remain and have perpetual succession; that *said institute* shall be *located at or near* the Village of Marengo in the County of McHenry, and State of Illinois, and *under the name and style above shall have power to make contracts, sue and be sued.* * * * to make and alter, from time to time, such by-laws as they may deem necessary for *the government of said institution*, its officers and servants. * * *

Sec. 2. The government *of the institute* shall at all times be vested *in a board of trustees*, which board shall consist of not less than five nor more than twelve members, one-third of which board shall constitute a quorum for the transaction of *all business of the institution* other than as is hereinafter provided for. * * *

Sec. 6. The said *institute* shall be open to all denominations of christians and the profession of any particular religious faith shall not be required of those who become students.

Sec. 8. All property of whatsoever kind and description *belonging or to belong to said institution or appertaining thereto* shall be and forever remain free and exempt from all taxation for any and all purposes whatsoever.

Sec. 10. This act to take effect and be in force from and after its passage; and it shall be deemed a public act, and shall *be construed liberally in all courts* for the purposes therein expressed."

1857.

"An Act to incorporate the Carbondale College, in Jackson County." (Private Laws of 1857, p. 265.) Made a public act.

"Sec. 1. That (the persons named) be and they are hereby created a body corporate and politic, to be styled 'The President and Trustees of the Carbondale College' and by that name and style to remain and have perpetual succession, with full power to sue and be sued, etc. * * * to make, and again, at their pleasure, to alter and amend a constitution and by-laws for the government and management of *said institution.* * * *

Sec. 2. That the *said college* shall be *located in or near* the Town of Carbondale, County of Jackson and State of Illinois. The object shall be to furnish instruction and the means of education to all persons who shall comply with the by-laws and regulations of *the institution.* * * *

Sec. 4. The *board of trustees* shall have power to appoint an executive committee and such other and additional agents or officers as they may deem necessary, and also such principals, professors and teachers as the good *government* and course of instruction adopted in *said institution* may require. * * * and prescribe and direct the course of studies to be pursued in *the college,* and also to confer such degrees and rewards of merit as are consistent with the object of the aforesaid *institution.*

Sec. 5. That the property, of whatsoever kind or description it may be, whether real, personal or mixed, already acquired or hereafter to be obtained, *belonging or appertaining to said college,* shall be forever free and exempt from all taxation, for all and every purpose whatever, whether county, school, road or state taxes.

Sec. 7. The president *and trustees* of *said college* shall faithfully apply *all funds by them collected or hereafter to be acquired,* according to their best judgment, in erecting suitable buildings; supporting the necessary principal, instructors, teachers, officers and agents; in purchasing necessary and useful books, maps, charts, globes, philosophical, chemical and other apparatus, to promote sound learning in said institution.

Sec. 9. *The treasurer and all other officers* and agents of the *said college,* when required so to do by the said president and trustees, or a majority of them, shall give bond. * * *

Sec. 10. The president and trustees of *said college* shall hold at least one stated meeting in each year. * * *

Sec. 12. This act shall be deemed a public act and shall be in force from and after its passage, and *shall be liberally construed in all courts* in this state for the purposes herein expressed."

1861.

"An Act to Incorporate the Bloomingdale Academy." (Private Laws of 1861, p. 9.)

Sec. 1. That (the persons named) and their successors in office, be and are hereby created a body politic and corporate, under the name and style of 'The President and Trustees of the Bloomingdale Academy', and by that name and style to remain and have perpetual succession. The *said academy shall be and remain* in or within one-half mile of the Town of Bloomingdale, in the County of Du Page, and State of Illinois. The number of trustees shall not exceed nine. * * *

Sec. 9. All deeds or instruments of writing, for the conveyance of real estate to the said corporation shall be made to 'The President and Trustees of Bloomingdale Academy' and their successors in office, for the use of *said academy.*

Sec. 11. All property, of whatever kind and description, *belonging or appertaining to said academy,* shall be and forever remain free and exempt from all taxation for any and all purposes whatever. The amount of property so exempt not to exceed twenty-five thousand dollars.

Sec. 12. There shall be attached to *said academy* a department, in which shall be taught such branches as are usually taught in common schools; and *the trustees of said academy* shall receive from the school treasurer of the town such amount and proportion of the common school fund as is received by other common schools; provided said trustees comply with the laws regulating common schools.

Sec. 13. The legal voters of the Town of Bloomingdale may vote at their next annual town meeting 'For Academy' or 'Against Academy' by endorsement on their ballots. * * * (providing for a tax); and said county clerk shall compute said tax which shall be collected as county taxes are by law collected, and, when collected, shall be by the collector paid over to the township treasurer of said township, and shall be by him paid out on the order of the president and secretary *of the academy,* for the purpose of erecting suitable buildings *for the use of said academy;* and said trustees of schools shall cause such tax upon the property of said town to be assessed, annually, as will be necessary to defray the expenses of teachers' wages, fuel, and other incidental expenses *in said academy,* by certifying the same, etc. * * * The teachers in *said academy* shall be examined and qualified by the school commissioner of DuPage County; shall keep schedules, and shall return the same as districts are required by law to do; and the trustees of schools *shall apportion to said academy,* upon said schedules, at each of their regular meetings, according to the grand total number of days taught, *their proportion of the town, county and state funds,* the same as though *said academy* were one of the school districts of said township forty north, range ten, east of the third principal meridian. * * *

1867.

"An Act to incorporate Southern Illinois College in Carbondale, Jackson County." (Private Laws of 1867, Vol. 1, p. 32.) Made a public act.

"Sec. 1. That (the persons named) and their successors be and are hereby created a body corporate and politic, to be styled 'The President and Trustees of Southern Illinois College,' and by that name to remain and have perpetual succession, with full power to sue and be sued. * * * to make, alter and amend, at their pleasure, a constitution and by-laws for the management and government of *said institution,* and finally to do whatever may be necessary to carry out fully the object of this act of incorporation.

Sec. 2. That the *said college shall be located* in or near the Town of Carbondale, County of Jackson, State of Illinois. The object shall be to furnish instruction and means of education to all who may comply with the by-laws and regulations *of the institution,* and shall be open equally to all persons for this purpose, etc.

Sec. 6. The board of trustees shall have power to appoint an executive committee and such other and additional officers and agents as may be necessary, and also such principals, professors and teachers as the good government and course of instruction adopted in *such institution* may require, and to remove any of them for sufficient reasons. They shall prescribe the course of studies to be pursued *in the college,* and to confer such degrees and rewards of merit as may be consistent with the object of the *aforesaid institution.*

Sec. 7. That the property of whatsoever kind or description it may be, whether real, personal or mixed, already acquired or hereafter obtained, *belonging or appertaining to said college,* shall be forever free and exempt from all taxation for all and every purpose whatever, whether state, county, city or village, corporation, school or road taxes.

Sec. 10. The president and trustees of *said college* shall faithfully apply all the *funds* by them collected or hereafter acquired, according to their best judgment, in erecting suitable buildings, supporting the necessary instructors, officers and agents, in purchasing useful and necessary books, maps, charts, globes and chemical and philosophical apparatus, or promote sound learning in *said institution.*

Sec. 12. The treasurer and all agents of *said college,* who shall be intrusted with money, funds or other property of *the institution,* shall, when required to do so by the trustees, give a bond for the faithful discharge of such trust, etc.

Sec. 13. The president and trustees of *said college* shall hold one stated meeting each year, etc.

Sec. 15. This act shall be deemed a public act, and shall be in force from and after its passage, and shall be *liberally construed in all courts* in this state, for the purpose herein expressed."

1869.

"An Act to amend an act entitled 'An Act to amend "An Act entitled an act to incorporate the Lind University," approved February 13th, 1857, and approved February 16th, 1865.'" (Private Laws of 1869, Vol. 1, p. 43.)

"Sec. 1. * * * That all property, of whatsoever kind and description, *belonging or appertaining to* the *Lake Forest University,* shall be and forever remain free and exempt from all taxation for state, county or municipal purposes, excepting as is provided in section (13) thirteen of the said act, approved February 16th, 1865, of which this act is amendatory."

"An Act to amend an act entitled 'An Act to incorporate the Lind University,' approved February 13, 1857." (Private Laws of 1865, Vol. 1, p. 49.) Made a public act.

"Sec. 1. * * * That the name and style of Lind University, created by the act mentioned in the title to this act, be, and the same is hereby changed to 'Lake Forest University,' by which name it shall hereafter be known.

Sec. 2. The present board of trustees of said Lind University shall be, and the same are hereby constituted and continued *as the trustees of Lake Forest University,* and by *said name and style* are hereby created a body corporate and politic, and by *said name* shall remain and have perpetual succession.

Sec. 3. The number of trustees *of said university,* instead of twenty, as heretofore, shall be not less than sixteen, but may be increased to twenty-five, including the president for the time being of the institution, who shall be a trustee *ex officio.* * * *

Sec. 10. The trustees of *said university* shall have authority from time to time to prescribe and regulate the course of studies to be pursued in *said university,* and in all the departments attached thereto; to fix the rate of tuition, etc.

Sec. 12. It shall not be lawful for the trustees of *said university* to apply any of said lands, so donated, or to be donated to them, as aforesaid, or any part of the proceeds or

credits thereof, *to any institution* other than those *located at* Lake Forest and on the lands donated. * * *

Sec. 17. This act shall take effect and be in force from and after its passage, and shall be deemed a public act, and shall be *liberally and benignly construed in all courts and places* in the furtherance of the objects thereof."

III.

CHARTERS IN WHICH THE WORD "LOCATED," ETC., IS USED IN A CONNECTION WHICH INDISPUTABLY SHOWS THAT THE INCORPORATED INSTITUTION WAS REFERRED TO.

1847.

"An Act to incorporate a Literary and Theological Institution of the Evangelical Lutheran Church of the Far West, *to be located* in Hillsboro, Montgomery County, Illinois."

(Private Laws of 1847, p. 57.)

"Sec. 1. That (the persons named) are hereby created *a body corporate and politic* by *the name, style and title of* the Board of Trustees of the Literary and Theological Institute of the Far West, *located in* Hillsboro, Montgomery County, Illinois, and they and their successors in office, as such, shall have power to sue and be sued," etc.

1853.

"An Act to incorporate the Galena Theological Seminary."

(Private Laws of 1853, p. 274.) Made a public act.

"Sec. 1. That (the persons named) and their successors, are hereby constituted *a body politic and corporate* under *the name and style of* the Galena Theological Seminary, *to be located at or near the City of Galena;* and *by that name and style to remain, and shall have* perpetual succession, with power to sue and be sued, etc."

1857.

"An Act entitled 'An Act to incorporate the Aledo Collegiate Institute.'" (Private Laws of 1857, p. 1010.) Made a public act.

"Sec. 1. That (the persons named) and their successors in office are hereby constituted *a body politic and corporate*, under *the name and style of* 'The Aledo Collegiate Institute,' to be *located at* the Town of Aledo, in the County of Mercer, in the State of Illinois, *and by that name and style to remain and to have* perpetual succession, withpower to sue and be sued," etc.

"An Act to incorporate the Henry Female Seminary, in Marshall County, Illinois." (Private Laws of 1857, p. 1063.) Made a public act.

"Sec. 1. That (the persons named) be and are hereby constituted *a body politic and corporate*, known by *the name and style of* 'Board of Trustees of the Perpetual Fund for the Tuition of Indigent Youth, in Henry Female Seminary,' *located near* Henry, Marshall County, Illinois, *with power to sue and be sued;* to acquire, hold, sell and transfer both real and personal property by any and all usual modes as individuals may or can do."

1859.

"An Act to incorporate the Ewing Female University." (Private Laws of 1859, p. 363.) Made a public act.

"Sec. 1. That the trustees and proprietors of the Ewing Female University in the City of Knoxville, Knox County, Illinois, are hereby constituted *a body corporate and politic* by *the name of* 'The Ewing Female University,' *located* and always to remain at the said City of Knoxville, *for the purpose of promoting* collegiate and academic female education."

1865.

"An Act to incorporate the Mount Zion Male and Female Seminary." (Private Laws of 1865, Vol. 1, p. 25.)

"Sec. 1. That (the persons named) and their successors in office are hereby constituted *a body politic and corporate*, under *the name and style of* 'The Mount Zion Male and Female Seminary,' to be *located* at Mount Zion, in the County of Macon and State of Illinois, *and by that name and style to remain and have* perpetual succession, with power to sue."

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